

LAFCO**Meeting Date:** February 14, 2007**TO:** LAFCO**FROM:** Neelima Palacherla, Executive Officer
Dunia Noel, LAFCO Analyst**SUBJECT:** **LAFCO'S AGRICULTURAL MITIGATION POLICIES**
Agenda Item # 6

This staff report makes several references to the October 11, 2006 and December 13, 2006 staff reports on this issue. These staff reports are available at the LAFCO website, www.santaclara.lafco.ca.gov, under the "What's New?" section. If you are unable to download and would like these reports faxed or mailed to you, please call LAFCO staff at (408) 299-6415.

STAFF RECOMMENDATION

1. Accept and consider staff report, take public testimony and provide staff with direction.
2. Continue public hearing to the April LAFCO meeting.

DEVELOPMENT OF REVISED DRAFT AGRICULTURAL MITIGATION POLICIES

Background

In February 2006, LAFCO held a planning workshop that included a presentation by the Deputy County Agricultural Commissioner on Agriculture in Santa Clara County and LAFCO discussed its role in preserving agricultural lands. LAFCO, at its April 2006 meeting, directed staff to draft agricultural mitigation policies for LAFCO proposals that would result in the conversion of prime agricultural lands to urban uses in order to ensure that LAFCO's agricultural mitigation expectations and requirements are clear to applicants, cities, special districts and affected property owners. Staff was directed to prepare the policies for the Commission's consideration and approval in the Fall of 2006.

Public Review, Comment and Revision of the Draft Policies

August 2006 through October 2006

The Draft Agricultural Mitigation Policies were first circulated on August 14, 2006, for review and comment and scheduled for a public hearing for October 11, 2006. A workshop was held on August 28th to discuss the Draft Policies and take comment. To allow affected agencies and stakeholders additional time to provide comments and to allow LAFCO staff additional time to consider and address

stakeholder concerns, the October Public hearing was postponed to December 13th. At the October 11, 2006 LAFCO meeting, staff discussed the October, 2006 LAFCO staff report, provided an update and discussed the draft policies. The commission took public testimony and discussed the issues. LAFCO staff then revised the Draft Policies and released the Revised Draft Policies for public review and comment on October 26th with comments due on November 28th.

November 2006

Staff then held a workshop to discuss the policies on November 13, 2006 and another workshop in South County (as requested by the City of Gilroy) on November 27th. In addition, staff met with individual and stakeholder groups and made a presentation to the Gilroy Chamber of Commerce on November 17th.

December 2006

On December 6, 2006, the Revised Draft Policies were released for public review and comment. The majority of the revisions found in the October 26, 2006 and December 6, 2006 Revised Draft Policies were based directly on recommendations or suggestions made by stakeholders. Even with the revisions to the Draft Policies relating to "Timing and Fulfillment of Mitigation," many stakeholders remained concerned about these policies as mentioned in the December LAFCO staff report.

LAFCO, at its December 13, 2006 Meeting, formed a Subcommittee (consisting of Commissioners Don Gage and Susan Vicklund-Wilson) to recommend policies relating to two sections of the Revised Draft Policies namely: "Plan for Mitigation" and "Timing and Fulfillment of Mitigation" to the full Commission for final action. LAFCO limited the scope of the Subcommittee meeting to those two issues, but indicated that if additional issues were to arise at the Subcommittee meeting, the Subcommittee could seek the full Commission's approval to widen the scope of its review.

January 24, 2007 Subcommittee Meeting

The Subcommittee met on January 24, 2007 in Morgan Hill and discussed revisions to the two sections and accepted input from stakeholders. Please see **Attachment A** for list of Subcommittee meeting attendees. The subcommittee directed staff to bring the proposed revisions to the two sections to the full commission in February and provide the full commission with a summary of issues raised at the subcommittee meeting.

PROPOSED CHANGES TO THE DRAFT AGRICULTURAL MITIGATION POLICIES: JANUARY 24, 2007

At the subcommittee meeting, staff proposed a significant change in the provisions related to timing and fulfillment of mitigation. The proposed changes

were in response to requests from stakeholders for more flexibility in the time frame and process for fulfilling mitigation, and for better consistency with cities' existing processes. See **Attachment B** for proposed elements to revise LAFCO's Draft Agricultural Mitigation Policies and **Attachment C** for flowchart and comparison charts.

The following is a summary of the revisions proposed at the subcommittee meeting.

The proposed revisions do not provide a fixed time frame within which mitigation must take place and do not require that LAFCO approve a project on the condition that mitigation is fulfilled. Instead, the policies allow for the mitigation to be provided at the time of actual development, before the city's approval of a tentative map or issuance of a grading permit or building permit, whichever occurs first.

Since LAFCO has no authority over any further approvals for the project after a USA approval, LAFCO will need assurances from the cities that the mitigation requirements will be adequately enforced at the time of development. This assurance should be in the form of adopted city ordinances indicating that the city will ensure the fulfillment of mitigation at the time of city's approvals and/or permits. To enable LAFCO to evaluate the effectiveness of its policies and mitigation, the cities should provide LAFCO with an annual status report on the fulfillment of mitigation. In addition, a mitigation plan should be submitted with the LAFCO application. This Mitigation Plan should commit the property owner and establish the specifics of the mitigation in a legally binding agreement between the property owners, the city and/ or agricultural conservation entity. This agreement would be contingent on LAFCO USA approval and would be recorded against the property.

The following is a list of issues raised by stakeholders at the subcommittee meeting.

Issues Relating to "Timing And Fulfillment" and "Plan For Mitigation"

1. *How will LAFCO ensure that the agricultural mitigation policies are enforced and effective, since the mitigation will not occur at the time of LAFCO approval? Specifically,*
 - a. *Should audits be conducted by LAFCO as a way to measure the effectiveness of the policies?*

Under the proposed revisions, cities will provide LAFCO with a report on the status of mitigation fulfillment every year following LAFCO approval of the proposal until the agricultural mitigation requirements are fulfilled.

- b. *Should a city provide commitment to enforce the mitigation requirements by adopting ordinances or resolutions?*

Staff believes that a city ordinance would be a more effective means of ensuring that mitigation is fulfilled. Cities currently have ordinances pertaining to the timing and fulfillment of other types of mitigations and impact fees associated with approval and permitting of development.

- c. *Should LAFCO be a party to the mitigation agreement?*

LAFCO's role is to evaluate proposals for boundary changes against its established policies and to approve and deny proposals. Therefore, entering into such an agreement is not recommended.

2. *Should mitigation be provided prior to tentative map approval or prior to final map approval?*

As a means of ensuring that agricultural mitigation is fulfilled, the mitigation requirements should be included as conditions of a tentative map. All required mitigation should be completed prior to Final Map approval. Staff will revise proposed changes to reflect this.

3. *When will mitigation be fulfilled for projects that require multiple building permits?*

LAFCO does not deal with USA expansion proposals as individual development projects and it has no way of keeping track of development progress in each area. Whether the project involves a single building permit or several building permits, LAFCO policies will require that the mitigation must be fulfilled prior to the approval of final map or the issuance of the first building permit, whichever occurs first.

4. *How will LAFCO ensure that in-lieu fees are adequate to provide 1:1 mitigation when actual mitigation may not occur for many years? Specifically,*

- a. *Should LAFCO require higher mitigation ratios, for the in-lieu fee option to address increasing land costs when the time frame for fulfilling that mitigation is uncertain?*

Under the proposed changes, the time frame for fulfilling agricultural mitigation is uncertain and it is likely that land values will increase overtime which would also increase the costs of mitigation lands overtime. It is the intent of LAFCO that an equivalent amount and quality of agricultural land is preserved, regardless of whether that

land is preserved today or at some future date. The Draft Policies should be revised to reflect that intent. One way to address this issue is to ensure that the in-lieu fee calculation methodology accounts for changes in land values. Also, please refer to October 11, 2006 LAFCO Staff Report, Page 8 for additional information.

b. How will LAFCO ensure that in-lieu fees are used by agricultural conservation entities in a timely manner?

An agricultural conservation entity will report annually to LAFCO on the use of the in-lieu fees until the fees have been fully expended. Please also refer to the October 2006 LAFCO Staff Report, Page 14, Question #4 for additional information.

5. After LAFCO approval, how will LAFCO ensure that its agricultural mitigation requirements will apply to future property owners?

The mitigation agreement would be recorded with the County Recorder's Office and against the property to be developed. The agreement would also state that it would run with the land and therefore apply to future property owners.

6. Should LAFCO discourage approval of USA amendments when mitigation is pending for prior USA amendments?

The proposed changes no longer include a policy that discourages submittal to LAFCO or LAFCO's approval of USA amendments when mitigation is pending for prior USA amendments. However, LAFCO, as part of its proposal review process, will consider various factors, including the status of fulfillment of mitigation for previous approvals.

7. Should LAFCO policies require that mitigation must be fulfilled in 2 years and allow an extension of time only if applicant pays additional fees and demonstrates that they are actively in pursuit of obtaining mitigation?

While a 2-year time-frame for the fulfillment of mitigation with the possibility of an extension is preferable for several reasons, many stakeholders commented that a more flexible time-frame and process is needed in order to address financing issues and unique or special circumstances. If the proposed procedure for mitigation fulfillment does not work to LAFCO's satisfaction, LAFCO has the ability to revisit the issue at a later date and revise its policies.

Other Issues (NOT Related to “Timing And Fulfillment” Or “Plan For Mitigation”)

Issues Previously Addressed

1. *Does LAFCO have the authority to require agricultural mitigation?*

LAFCO Legal Counsel has issued an opinion stating that LAFCO has the authority to require agricultural mitigation. Please see legal opinion from LAFCO Counsel (Attachment E in December 2006 LAFCO staff report).

2. *Why is LAFCO not using the Land Evaluation Site Assessment Model (LESA) to determine whether an application requires agricultural mitigation?*

Please refer to October 2006 LAFCO Staff Report, Page 6, Question #1.

3. *Will the adoption of the agricultural mitigation policies by LAFCO result in the unintended consequence of inducing urban development in the unincorporated county?*

Please refer to the December 2006 LAFCO Staff Report, Page 5, Question #6.

4. *Why do the Draft Policies require that agricultural mitigation occur at a 1:1 ratio and not at a higher or lower mitigation ratio?*

Please refer to the October 2006 LAFCO Staff Report, Page 8, Question #1.

New Issues and Concerns

1. *Will LAFCO’s Agricultural Mitigation Policies negatively affect housing affordability and drive up home prices in the area?*

Mitigation (agricultural, habitat, etc.) and other types of development fees (park fees, school fees, etc.) may affect housing prices. It would be speculative and impossible to accurately calculate at this time the specific effect that LAFCO’s agricultural mitigation policies will have on housing prices. The effect will depend on several factors such as, the price at which the developer purchased the land for, the type of development, the amount of return the developer expects to receive from the development, the specific mitigation option selected by the landowner, the value of agricultural lands at the time the mitigation is fulfilled, etc. However, there are also studies that indicate that homebuyers are willing to pay more for homes that are near preserved lands. It is possible that these two factors will offset each other to a degree. Also, one of the best ways to address traffic, air quality, and affordable housing issues is to discourage urban sprawl, prevent the premature conversion of agricultural lands, and to promote the efficient use of land through encouraging higher densities in cities, locating housing near

employment centers, and planning and improving local and regional transportation infrastructure.

2. *Are these Agricultural Mitigation Policies requirements or “policies”?*

The purpose of LAFCO’s Agricultural Mitigation Policies is to guide the commission in evaluation of proposals pursuant to the authority vested in LAFCO by the CKH Act. These are policies only, however, agricultural mitigation will be a significant consideration in the review and analysis of proposals. Staff will review and modify language in the Draft policies to make sure that the language in the policies reflects this.

CORRESPONDENCE

Please see Attachment D for all the correspondence received on this issue since the December 13, 2006 LAFCO meeting.

NEXT STEPS

If the Commission so directs, LAFCO staff will revise the policies to include the elements of the proposed changes. The revised policies along with the CEQA analysis will be circulated/ made available on the LAFCO web site for public review and comment. A second subcommittee meeting will be held to discuss the revised policies and to obtain input from stakeholders. A LAFCO public hearing will be held in April to consider adoption of the agricultural mitigation policies.

ATTACHMENTS

Attachment A:	January 24, 2007 Subcommittee Meeting Attendees List
Attachment B:	Proposed Elements of a Proposal to Revise LAFCO’s Draft Agricultural Mitigation Policies
Attachment C:	Proposed Process for Timing and Fulfillment of Agricultural Mitigation and Comparison of Processes for Timing and Fulfillment of Mitigation
Attachment D:	Comments received after December 13, 2006

**LAFCO Subcommittee Meeting
on LAFCO's Draft Agricultural Mitigation Policies
Morgan Hill City Council Chambers
January 24, 2007**

LIST OF ATTENDEES

- | | |
|----------------------------|--|
| 1. Javier Aguirre | Supervisory District 2 |
| 2. Jim Aplan | Country News |
| 3. Ken Bone | Interested Party |
| 4. Laura Branton | Morgan Hill Chamber of Commerce |
| 5. Beverly Bryant | Home Builders Association of Northern California |
| 6. Tony Burchyns | Morgan Hill Times |
| 7. Eric Carruthers | Coyote Valley Specific Plan Task Force |
| 8. David Collier | Save Open Space – Gilroy |
| 9. Roger Costa | <i>Not Indicated</i> |
| 10. Tim Day | Gilroy Planning Commission |
| 11. Daniel Ehrler | Morgan Hill Chamber of Commerce |
| 12. Ted Fox | Morgan Hill Chamber of Commerce |
| 13. Pamela Guerra | Gilroy Economic Development Corporation |
| 14. Jared Hart | City of San Jose |
| 15. Melissa Hippard | Sierra Club, Loma Prieta Chapter |
| 16. Jane Howard | Gilroy Visitors Bureau |
| 17. Kai Lai | Gilroy Chamber of Commerce |
| 18. Annie Mudge | Coyote Housing Group, LLC |
| 19. Jenny Nusbaum | City of San Jose |
| 20. Kevin O'Day | SCC Department of Agriculture |
| 21. Rob Oneto | Gilroy Chamber of Commerce |
| 22. Al Pinheiro | City of Gilroy |
| 23. Carol Presley | SCVWD / Pajaro Groundwater Preservation Project |
| 24. Kathy Molloy-Previsich | City of Morgan Hill |
| 25. Brian Schmidt | Committee for Green Foothills |
| 26. Vera Todorov | City of San Jose |
| 27. Carolyn Tognetti | Save Open Space - Gilroy |
| 28. Colleen Valles | Supervisory District 1 |
| 29. Kerry Williams | Coyote Housing Group, LLC |
| 30. Gary Winzeler | Coldwell Banker |
| 31. Kristina Chavez Wyatt | Armanasco Public Relations |
| 32. Don Weden | |

**POTENTIAL ELEMENTS OF A PROPOSAL TO REVISE LAFCO'S DRAFT
AGRICULTURAL MITIGATION POLICIES**

For Discussion at January 2007 Agricultural Mitigation Policies Subcommittee Meeting

TIMING AND FULFILLMENT OF MITIGATION

1. LAFCO prefers that agricultural mitigation be in place at the time of LAFCO approval or as soon as possible after LAFCO approval. The mitigation (as detailed in the Plan for Mitigation) must be fulfilled no later than at the time of city's approval of the tentative map, or issuance of the grading permit or building permit, whichever occurs first.
2. Through the adoption of an ordinance/resolution, the city will assure LAFCO that the city will enforce the mitigation requirements no later than at the time of city's approval of the tentative map, or issuance of the grading permit or building permit, whichever occurs first. The City will adopt procedures for ensuring that the mitigation is fulfilled at the appropriate time.
3. City will provide LAFCO with a report on the status of mitigation fulfillment every year following LAFCO approval of the proposal until the agricultural mitigation requirements are fulfilled.

PLAN FOR MITIGATION

A Plan for Agricultural Mitigation that is consistent with LAFCO's Policies must be submitted at the time that a proposal impacting agricultural lands is filed with LAFCO. The Plan for Mitigation shall include all of the following:

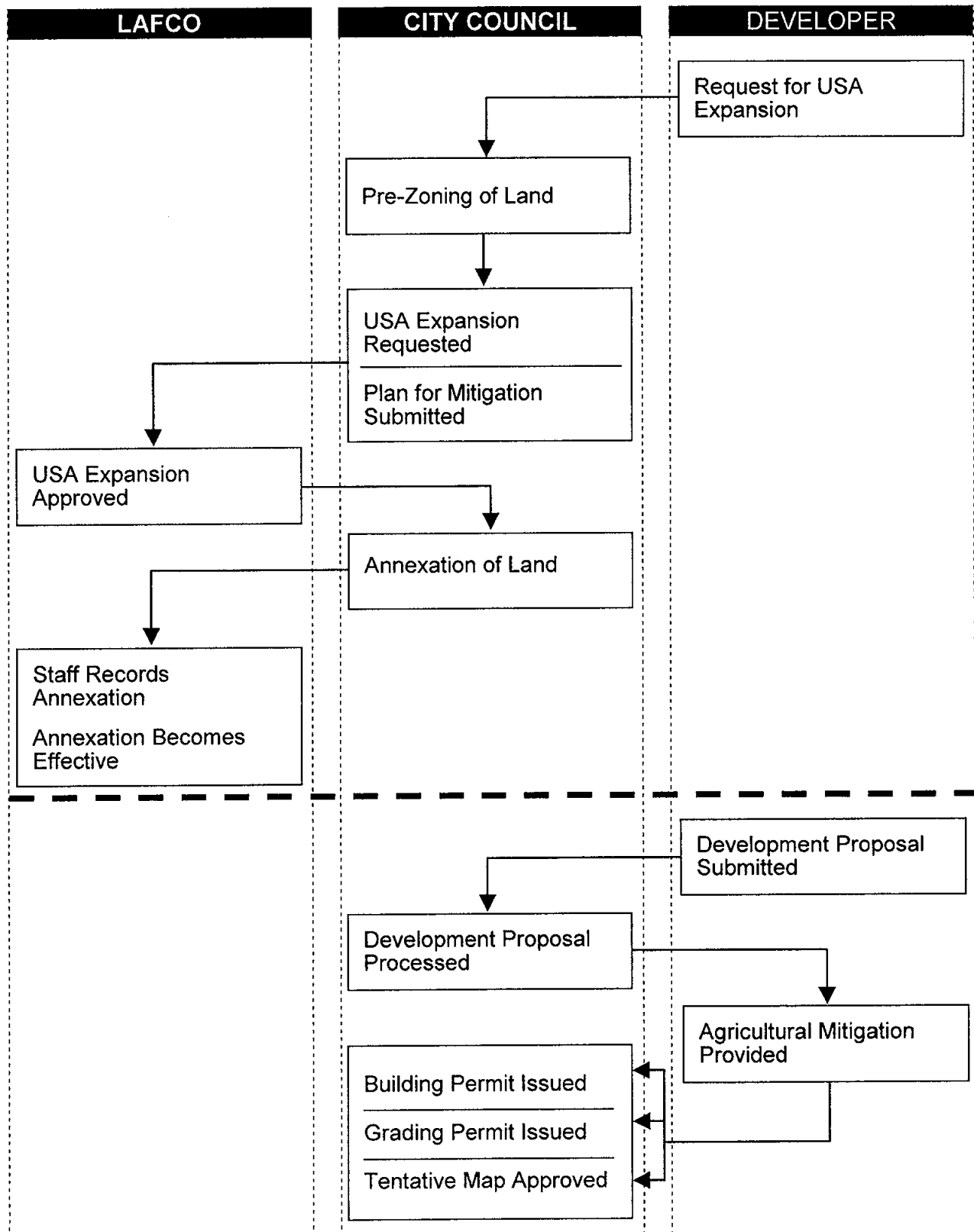
1. An agreement between the property owner, city and agricultural conservation entity (if such an entity is involved) that commits the property owner(s) to provide the mitigation for the loss of prime agricultural lands and establishes the specifics of the mitigation in a manner consistent with these Policies. The agreement will specify:
 - a. The type of mitigation that will be provided in order to mitigate for conversion of agricultural lands. (purchase of fee title or easement or payment of in-lieu fees)
 - b. The agricultural conservation entity that will be involved in holding the lands, easements, or in-lieu fees.
 - c. The acreage that would be preserved through mitigation and /or the methodology to be adopted for calculating the in-lieu fees.
 - d. The location of the mitigation lands, where possible.
 - e. Information on the specific measures adopted by the city as encouraged in Policy #11 (mitigation for impacts to adjacent agricultural lands)
 - f. The time-frame within which the mitigation will be fulfilled, which must be no later than at the time of city's approval of the tentative map, or issuance of the grading permit or building permit, whichever occurs first.

2. An ordinance/ resolution adopted by the City Council to establish a process to enforce the mitigation measures and confirming that the city will enforce the mitigation measures as specified in the agreement.
3. The agricultural conservation entity will report annually to LAFCO on the use of the in-lieu fees until the fees have been fully expended.
4. The mitigation agreement is to be contingent on LAFCO approval of the proposal.
5. Upon LAFCO approval of the proposal, the agreement will be recorded with the County Recorder's office against the property to be developed.
6. Applicant should provide all other supporting documents and information to demonstrate compliance with these Policies.

ITEM No. 6

ATTACHMENT C

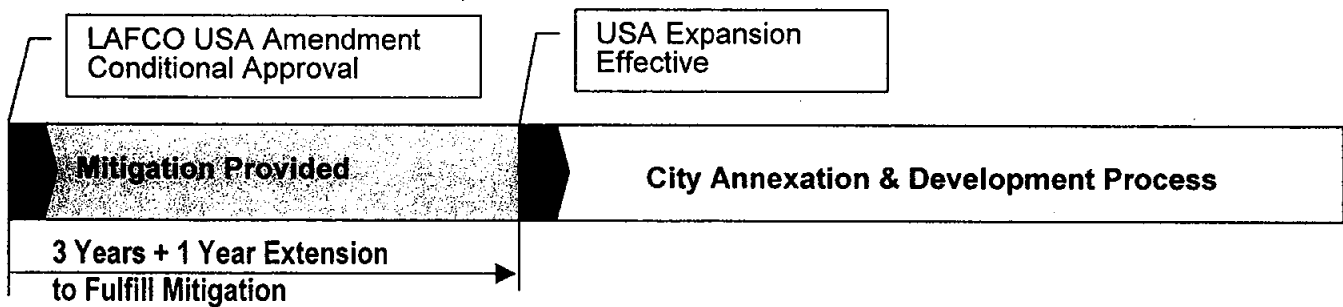
PROPOSED PROCESS FOR TIMING AND FULFILLMENT OF AGRICULTURAL MITIGATION



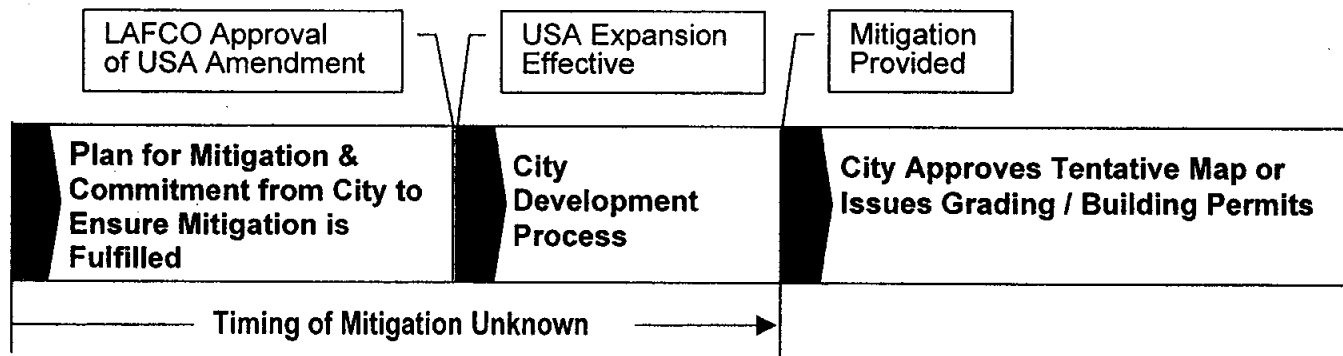
January 24, 2007

COMPARISON OF PROCESSES FOR TIMING AND FULFILLMENT OF MITIGATION

December 6th Version of Timing and Fulfillment of Mitigation



Proposed Revisions to Timing and Fulfillment of Mitigation





February 8, 2007

To: Santa Clara County Local Agency Formation Commission (LAFCO)

From: Trixie Johnson, Friends of Coyote Valley Greenbelt (FROG)

RE: LAFCO's Draft Agricultural Mitigation Policies

Progress Toward Achieving a Consensus Solution

The Friends of the Coyote Valley Greenbelt (FROG) again wishes to commend LAFCO and its staff for addressing the important and timely topic of mitigation for the loss of agricultural lands to urban development.

We believe that the refinements that the LAFCO staff has been making in LAFCO's draft agricultural mitigation policies have been responsive to stakeholder concerns and are moving in positive directions.

We hope that these and future refinements will lead to LAFCO adoption of agricultural mitigation policies that will be supported by each of the major groups of stakeholders FROG identified in its January 15, 2007 letter to LAFCO (including LAFCO, the cities, landowners and developers, open space advocacy organizations, and potential agricultural mitigation implementation agencies and/or organizations).

Two Basic Goals: Reasonableness and Effectiveness

As we indicated in our January 15th letter, FROG believes that there are two basic goals that should guide the development of LAFCO's agricultural mitigation policies – reasonableness and effectiveness.

Progress Toward Addressing Concerns Regarding Reasonableness

Recent revisions by LAFCO staff have made the proposed policies more reasonable by addressing some of the major concerns raised by the cities, and by landowners and developers. These have included, among other things:

1. Replacing the proposal for "conditional approval" of Urban Service Area expansions that would have:
 - a. Required that agricultural mitigation be accomplished before approval of a proposed urban service area boundary expansion would become final, and
 - b. Rescinded LAFCO's conditional approval of the proposed urban service area boundary if agricultural mitigations were not accomplished within a particular time period (e.g. three years)

This was replaced by a policy indicating that mitigation should be accomplished prior to the issuance of building permits, or at other appropriate times earlier in the cities' development approval processes.

2. Providing for flexibility with regard to the specific amount of mitigation to be provided. The original draft called for a rigid 1:1 mitigation standard (i.e. one acre preserved for each acre to be developed). Subsequent LAFCO staff revisions would allow for variations from this standard under certain conditions.

Through these and other revisions, LAFCO staff has been seeking to make the draft policies more reasonable.

Additional Concerns Regarding Reasonableness

There apparently remains, however, at least one more major issue of concern to the cities and the land development community – whether LAFCO should adopt agricultural mitigation policies or agricultural mitigation requirements. The cities and various organizations have stated opposition to LAFCO adopting requirements for agricultural mitigation, although they generally acknowledge LAFCO's authority to adopt agricultural mitigation policies indicating that proposed agricultural mitigations will be an important factor in its decisions regarding urban service area boundary proposals that would involve the development of prime agricultural lands

Need for Further Refinement to Ensure Effectiveness

While FROG agrees that whatever LAFCO adopts with regard to agricultural mitigation must be reasonable, FROG also believes strongly that whatever LAFCO adopts must be effective in permanently preserving significant amounts of prime agricultural lands, commensurate with the amount of land that will be lost to development through urban service area expansions.

Adopting agricultural mitigation policies that are reasonable, but ineffective, would be a charade. So it is critical that LAFCO achieve both of these goals with regard to agricultural mitigation.

Assuring That Agricultural Mitigation Will Be Effective

FROG would ideally prefer that LAFCO adopt agricultural mitigation requirements.

However, FROG would be willing to support LAFCO adoption of agricultural mitigation policies, so long as they contain certain provisions that FROG believes are important to help assure the effectiveness of agricultural mitigation.

Regardless of whether LAFCO decides to address agricultural mitigation in the form of policies or as requirements, FROG believes that LAFCO should include the following provisions, most of which are already in the current staff draft:

1. LAFCO should make it very clear that adequate and assured agricultural mitigation will be an important consideration in its decisions regarding whether or not to approve a city's proposal for expansion of its urban service area to include prime agricultural lands.
2. Each of the relevant cities should be encouraged to develop and adopt an explicit, citywide agricultural land mitigation "plan" consisting of the goals, policies,

procedures, and ordinances that it will apply to lands within areas it proposes to include in LAFCO urban service area boundary expansion requests.

- a. As part of these “plans,” cities should be encouraged to adopt ordinances and procedures that assure that issuance of building permits for individual development projects within the urban service area expansion area will not occur until agricultural mitigation obligations have been fulfilled.
 - b. The basis for determining the amount of mitigation should be clear. This would generally be in the form of a ratio of land requiring mitigation to the amount of land to be preserved as mitigation. The basis may allow for some variation, as long as the variation serves an identified public rather than private interest.
 - c. The form(s) of mitigation that the city will consider acceptable (e.g. in lieu fees, donation of lands and/or easements, etc.) should be made clear.
FROG favors the payment of in lieu fees as the preferred mitigation method.
 - d. Other programs or activities the city is or will be carrying out to support local agriculture.
 - e. Cities should specify in their plan the explicit criteria for selection of a qualified public agency or nonprofit organization to administer the fees, purchase mitigations lands/easements, hold the lands/easements for the long term, and administer/manage them.
 - f. Cities should be encouraged to make written information regarding its agricultural mitigation policies, ordinances, and procedures easily available to landowners, developers, and the community at large.
3. LAFCO should be given an opportunity to review and comment on the each city’s mitigation “plan” prior to its adoption by the city council.
 4. Each subsequent individual city application to LAFCO requesting expansion of its urban service area boundary to include prime agricultural lands should:
 - a. Indicate how the city’s agricultural mitigation “plan” will be applied to lands within the area of the proposed expansion,
 - b. Include a written agreement between the city and a qualified public agency or nonprofit organization that will be responsible for acquiring, managing, or administering agricultural lands and/or agricultural conservation easements obtained under the city’s agricultural mitigation “plan” if LAFCO approves the city’s urban service area boundary expansion request.
The written agreement should specify how in lieu mitigation fees will be adjusted over time to account for increased acquisition, management, and administrative costs.
 5. LAFCO should establish the method(s) to be used in determining which lands within a proposed urban service area expansion area are potentially subject to mitigation, i.e. which ones are “prime agricultural lands.”

- a. Use of the Land Evaluation and Suitability Assessment (LESA) model should not be allowed because (1) it is based on a traditional model of agriculture that does not reflect the many ways that agriculture is evolving throughout the United States, and (2) because it can easily be manipulated to avoid mitigation.
 - b. It may be desirable for LAFCO to make available an appropriate map (e.g. the California Department of Conservation's "Important Farmlands Map") that will provide the cities, landowners, developers, and the community at large with a general indication of the lands outside current city urban service areas that may be subject to agricultural mitigation if they are proposed for development.

(Note: The map should include appropriate disclaimers indicating that it is not an "official" agricultural mitigation map, since some additional lands may also qualify as "prime agricultural lands," based on other criteria established under state law.)
6. Each city – and any public agencies or nonprofit organizations with which it has contracted to administer its agricultural mitigation program – should submit annual reports to LAFCO indicating the status of the implementation of agricultural mitigations required for lands within urban service area boundary expansions approved subsequent to LAFCO's adoption of its agricultural mitigation policies or requirements.

File: FROG LAFCO Comments 2-8-07

LAFCO
County of Santa Clara
70 West Hedding Street
San Jose, CA 95110

Dear LAFCO members,

I hope that you will carefully weigh the problems inherent in annexation and development of the area known as the 660 acres currently in Santa Clara County near Gilroy. My name is Janet Espinosa, a long time resident of the area living within sight of the 660 acres.

I would love to construct two homes on my acreage in the country, but that is not how the area is zoned. I am surrounded by agriculture, and it is my hope and that of my neighbors that we continue to enjoy the quiet country life.

Let us get to a matter of utmost importance. There are several reasons why the land east of the freeway and next to Leavesley Road should not become a mall.

#1. Most important is that the land is both excellent for agriculture and is in a flood plain. We must look at the greater good for the local people, and that is not achieved by paving over this area. This is some of the richest agricultural acreage in the county and grows several crops each and every year. Development in the area would also be an immediate threat to our homes in the flood plain. In addition there are other suitable areas for the unnecessary mall, areas not currently in agriculture.


#2. The 660 acres were brought into the sphere of influence, future urban area of Gilroy under the pretext of having an industrial campus. Although that was a good way to get skilled jobs in the area, it was also the wrong area. That the Gilroy City Council should now even be considering annexation and piecemeal development is just plain wrong. Why should any development in that area proceed?

#3. There are numerous empty locations in Gilroy that need to be developed. I think they sometimes call it in-fill. Do we need more empty store fronts downtown, in the outlets, the old Wal-Mart, near tenth street, on first street, etc.? I don't believe so.

#4. Have you visited an attractive mega-mall recently? Oakridge, Northridge, Eastridge, other Westfield malls, etc., are not surrounded by beauty and quality residential developments. Santana Row is an exception which would be a better integration of retail, restaurants, office space and residential, but it doesn't look like the plans for this area. The plan presented at the City Council study session tonight might be an excellent way to revitalize Gilroy's downtown, especially if relocated near the train station and the new performing arts center. Some excellent possibilities here for mixed used development.

We need business and we need agriculture, each in the best possible location. Please protect the quality of life in Gilroy. Thank you for hearing our concerns.

Sincerely,


Janet Espinosa
8465 Marcella Ave.
Gilroy, CA 95020

1/24/07

LAFCO Commissioners Gage and Wilson
The LAFCO Commission
Neelima Palacherla, LAFCO Executive Officer

Public input and stakeholders comments on the LAFCO's draft policy "**Plan for Mitigation**" and "**Timing and Fulfillment of Mitigation**"'s sections submitted by Ken Bone from Gilroy

Plan for Mitigation

- 12/6 Draft item # 13. A plan for [open space habitat/nature and] agricultural mitigation that is consistent with this Policy must be submitted at the time that the proposal impacting [open space habitat lands and/or] agricultural lands is filed [and the application fees are paid.]

12/6 Draft item # 14 The plan for mitigation shall include all of the following:

- 12/6 Draft item # 14 a. An agreement between the property owner(s) and the city or between the property owner, city and [the open space habitat/nature or] agricultural conservation entity [that belongs to the Land Trust Alliance] (if such an entity is involved)... .. mitigation for the loss of [open space habitat/nature lands and] prime agricultural lands ...
- 12/6 Draft item # 14 a. continued ... Upon LAFCO's conditional approval, the agreement must be recorded with the County Recorders' Office against the property to be developed [and against the property that is mitigated, preserved, or set aside]

Timing and Fulfillment of Mitigation

12/6 Draft item # 15. (Change back LAFCO Draft items #15, as previously written with the [two (2)] years of conditional approval. (that is 24 full months to comply which is enough time for the serious acquisition of the replacement open space habitat lands or agricultural lands or conservation easements to be acquired and transferred or the [3:1] in-lieu fees be paid, or the conditional approval may expire without any extensions.)

- 12/6 Draft item # 15. LAFCO will require as a condition of approval that the [open space habitat/nature lands and the] agricultural lands or conservation easements be acquired and transferred or the [3:1] in-lieu fees be paid within [two (2)] years of LAFCO's conditional approval.

12/6 Draft item # 17. (Change back LAFCO Draft items #17, as previously written with the [two (2)] years of conditional approval)

- 12/6 Draft item # 17. If the conditions of approval are not met within [two (2)] years. [the conditional approval will expire unless the] applicant [pays the additional extension fees and re-applies] to LAFCO [within the last six (6) months of the initial two (2) year initial conditional approval period] for [a LAFCO] extension [including

demonstrating the continuing active pursuit of the required land mitigation, and the demonstrated actual need for a LAFCO approved extension], not to exceed [a maximum of one (1) additional] year. [All] further consideration by LAFCO will require a new application [and the payment of all new application fees. No additional extensions will be considered or allowed by LAFCO.]

- 12/6 Draft item # 19. ... involving [open space habitat/nature lands and] agricultural lands if [open space habitat/nature land mitigation and] agricultural mitigation has not been completed for the city's previous approvals. Status of pending [open space habitat/nature lands mitigation and] agricultural mitigation will be a [negative] factor that ... involving [open space habitat/nature lands and] agricultural lands.

As a follow up to my presentation and recommendation letter to the Commissioners dated December 6, I am recommending the following specific Commission actions and summarizing specific benefits based on the adoption of recommendations.

Recommended Commission Actions:

- Open Space lands and Fallow Lands be included in all sections of the adopted LAFCO land mitigation policy along with prime agricultural land at no less than a 2:1 ratio, two (2) acres preserved for every one (1) acre converted
- Provide in-lieu mitigation fees at no less than a 3:1 ratio, three (3) acres preserved for every one (1) acre converted to an Open Space/Nature conservation Trust entity or agricultural conservation Trust entity that belongs to the Land Trust Alliance
- Provide two (2) years for mitigation completion with a possible 1-year extension based on a proven record of genuine compliance and a proven extension need by the applicant
- Provide for Open Space education and native plant and native animal restoration programs for the mitigated Open Space Habitat Lands and the Fallow Open Space Lands

The Benefits to the Local Farmers:

- The protection and preservation of mitigated Open Space, especially Fallow Lands, benefits the farmers directly by providing a agricultural land bank on the rural edges of the County's cities
- The mitigated preserved lands will provide protected lands for future local food production and the protection of the agricultural way of life
- The mitigated preserved lands will provide protected lands for native species such as the endangered Burrowing Owl which feed on rodents protecting agricultural crops

The Benefits to the Local Communities and to the County:

- The protection and preservation of mitigated Open Space, especially Fallow Lands, benefits the local communities by providing a agricultural land bank on the rural edges of the County's cities for open space habitat education, for local farming, and for farming education.
- The Open Space mitigated land will attract people to the County's Open Space communities.

Benefits The Benefits to Santa Clara County:

- The protection and preservation of mitigated Open Space including the fallow and the mitigated agricultural lands benefits the local environment directly by providing a agricultural and open space land bank on the rural edges of the County's cities for all the County citizens to cherish and enjoy.
- "The valley of hearts delight" can still be enjoyed by our future generations, if we commit to it now by preserving Open Space and agricultural lands through mitigation!

The Benefits to the local Environment:

- The protection and preservation of mitigated Open Space including the fallow and agricultural lands benefits the local environment directly by providing a agricultural and Open Space Nature Preserve on the rural edges of the County's cities for the reintroduction of native plants and animals to be enjoyed by our future generations.

Respectfully,

Ken Bone
3290 Godfrey Ave.
Gilroy, CA 95020
408-848-1036



MORGAN HILL CHAMBER OF COMMERCE

25 WEST FIRST STREET
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January 22, 2007

Santa Clara County LAFCO
Local Agency Formation Commission
70 West Heading Street
11th Floor, East Wing
San Jose, CA 95110

Re: LAFCO Sub-Committee to Review Proposed Ag Mitigation Policy

Dear LAFCO:

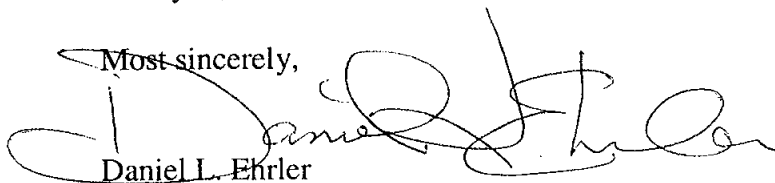
At the December 13, 2006, LAFCO Public Hearing, the Morgan Hill Chamber of Commerce was very pleased with the direction that the LAFCO Commission gave in regard to creating a sub-committee in order to examine the proposed Ag Mitigation Policy more closely. Even more significantly, we genuinely appreciated the LAFCO direction to include listening to the stakeholder comments that have been expressed in the last several months.

However, according to the City of Gilroy, recent scheduling fliers circulated by LAFCO staff have limited the discussion to only two specific sections of the proposed policy, and further, require stakeholders to "set up" private meetings with staff. We join the City of Gilroy in saying that we clearly understood from LAFCO dialogue and direction on December 13, that stakeholder input would be in an open forum where all interested groups could share their thoughts openly and together.

In addition, the Morgan Hill Chamber of Commerce has received NOTHING regarding meetings of any kind, even those addressed by the City of Gilroy! We genuinely look forward to participating in this public review process and believe some meetings in a South County venue would be most helpful and productive.

Thank you for listening to our issues and concerns. I genuinely look forward to hearing from you, soon.

Most sincerely,



Daniel L. Ehrler
President / CEO



Friends of the Coyote Valley Greenbelt (FROG)

January 15, 2007

To: Santa Clara County Local Agency Formation Commission (LAFCO)

From: Trixie Johnson, Friends of Coyote Valley Greenbelt (FROG)

RE: LAFCO's Draft Agricultural Mitigation Policies

INTRODUCTION

A Leadership Opportunity for LAFCO

The Friends of the Coyote Valley Greenbelt (FROG) wishes to commend LAFCO and its staff for addressing the important and timely topic of mitigation for the loss of agricultural lands to urban development.

We believe that adoption of agricultural mitigation policies by LAFCO will be seen by future generations as one of the landmark decisions that played a major role in contributing to the quality of life in Santa Clara County – along with the decisions of your predecessors on LAFCO who adopted the countywide urban development policies back in the 1970's that have helped to guide urban development and to preserve open space in this county for more than three decades.

FROG Observations and Suggestions

In this letter, we will be presenting some general observations regarding LAFCO's draft agricultural mitigation policies, along with recommendations for bringing this process to a successful conclusion.

FROG's general recommendations are summarized at the end of this letter.

GENERAL OBSERVATIONS

1. A Consensus Outcome Is Desirable – and Possible

FROG believes that a successful program of agricultural mitigation in Santa Clara County requires the support of all the major stakeholders who will be affected by it – and who will be responsible for taking supportive actions to make it successful.

Consequently, we believe the agricultural mitigation policies that LAFCO eventually adopts should reflect a broad consensus, achieved through an understanding of and respect for each of the stakeholders' underlying needs and goals.

Despite the seemingly divergent opinions that were expressed at the LAFCO hearing on December 13, FROG believes that such a consensus is attainable and that LAFCO is moving in the right direction to attain it by establishing your Subcommittee to review and refine the "Plan for Mitigation" and "Timing and Fulfillment of Mitigation" sections.

2. Defining "Consensus"

A consensus solution, as we would define it, is a solution that all the major stakeholders can support (or at least live with) because it either meets their own underlying interests, needs and goals or at least does not adversely affect them to a significant degree.

Consensus solutions are often referred to as "win/win" solutions since the basic interests of all the affected stakeholders are advanced by the outcome.

They do not necessarily give any or all of the stakeholders 100% of what they would ideally want; but they are preferable to "winner-take-all" or "win/lose" outcomes, after which the "losers" seek to undermine or veto them.

With an issue as important to Santa Clara County's future as agricultural mitigation, FROG believes that pursuit of a workable, consensus outcome is highly desirable.

3. Achieving Consensus

Often, with important public policy issues where there are multiple stakeholders and significant differences of opinion among the stakeholders, processes are established for achieving consensus. These sometimes involve professional facilitators and lengthy processes that actively engage the major stakeholders in a dialogue intended to help them reach consensus.

With regard to LAFCO's agricultural mitigation policies, FROG believes that consensus can be achieved in a more efficient way that does not require hiring of professional facilitators or lengthy, time-consuming processes.

This letter provides observations regarding consensus building and suggests how LAFCO's draft agricultural mitigation policies could be revised to achieve consensus among the major stakeholders.

4. Categorizing the Major Stakeholders in the Agricultural Mitigation Dialogue

In order to achieve consensus, it is generally necessary to begin by identifying the major stakeholders whose interests need to be taken into consideration with regard to the issue at hand, and the basic underlying interests of each group.

At the risk of oversimplification, it appears that the major stakeholders with regard to the LAFCO agricultural mitigation policy can be grouped as follows:

- a. LAFCO and its Staff
- b. The Cities (primarily San Jose, Morgan Hill, and Gilroy)
- c. Landowners and Developers
- d. Environmental Advocacy Organizations
- e. Potential Agricultural Mitigation Implementors
(i.e. public agencies and/or nonprofit organizations that might accept responsibility for using agricultural mitigation fees and other funds for purchasing agricultural lands and/or easements, managing them, etc.)

Before proceeding further, it should be acknowledged that:

- a. There are a number of other individuals and organizations that are stakeholders in LAFCO's decision. However, their concerns are generally quite similar to those of one or more of the major stakeholders. Consequently, if the concerns of the major stakeholders are successfully addressed, most of the concerns of the other stakeholders are likely to be met as well.
- b. The interests of all the agencies, organizations, or individuals within each of these major categories are not necessarily identical. But, in general, they have more shared concerns than differences. Therefore, for purposes of seeking a broad overall consensus, they can be viewed as being relatively similar.

5. An Overview of Stakeholder Interests

Again at the risk of great oversimplification, it appears that the major underlying interests, needs, or goals of the major stakeholder groups, as they relate to agricultural mitigation, can generally be summarized as follows:

a. LAFCO's and Its Staff's Interests

- 1. To adopt agricultural mitigation policies that will carry out LAFCO's state mandate to preserve agricultural lands
- 2. To have assurances that LAFCO's agricultural mitigation policies will be effectively implemented by the cities, developers, and agricultural conservation agencies/organizations

b. The Cities' Interests

- 1. To have flexibility with regard to the establishment of their own individual agricultural mitigation policies and procedures

2. To have LAFCO's agricultural mitigation policies be reasonable, from the cities' perspectives
 - a. To have agricultural mitigation policies that do not prevent the development of projects they feel are important to their community
 - b. To have the timing of agricultural mitigation implementation procedures be consistent with their normal land development procedures

c. Landowners' and Developers' Interests

Note: In general, it is probably true that landowners and developers would prefer not to have to mitigate for agricultural land losses; but, if agricultural land losses must be mitigated, they would probably prefer:

1. To have reasonable agricultural mitigation requirements that do not jeopardize the economic feasibility of their intended development projects
2. To have requirements and procedures that are fair, consistent, and predictable
3. To be able to fulfill their agricultural mitigation requirements in ways that are consistent with normal land development procedures

d. Environmental Advocacy Organizations' Interests

1. To have LAFCO adopt agricultural mitigation policies
2. To have assurances that LAFCO's agricultural mitigation policies will be effectively implemented by the cities and agricultural conservation agencies/organizations

e. Mitigation Implementors' Interests

1. To be able to determine the locations of the mitigation lands they will be responsible for
2. To be assured that any in lieu agricultural mitigation fees they receive are adequate to cover the costs of:
 - a. Acquiring fee title and/or agricultural conservation easements
 - b. Long term monitoring, managing, and/or enforcing the provisions of easement and/or lease agreements they may enter into
 - c. Conducting programs to support and promote local agriculture

6. Reasonableness and Effectiveness: The Two Keys to Agricultural Mitigation Consensus

Based on a review of the various comments LAFCO has received in writing and through testimony at its informational workshops and public hearings, there appear to be two major themes that underlie most of the comments:

- a. The need for LAFCO's agricultural mitigation policies to be *reasonable*, and
- b. The need for LAFCO's agricultural mitigation policies to be *effective*.

If these two basic concerns can be successfully and simultaneously addressed – and FROG believes they can – it should be possible for LAFCO to adopt agricultural mitigation policies with relatively widespread support.

7. Concerns Regarding *Reasonableness*

One of the draft LAFCO policies that has drawn the most comments with regard to reasonableness has been the proposal for “conditional approval” of city urban service area boundary (USA) expansions, that wouldn't become final until after mitigation has occurred and which would expire if the mitigation did not occur within a specified time period (currently proposed to be 3 years).

Landowners, developers, and cities have all commented that this is neither reasonable nor realistic, for a variety of reasons, including among others:

- a. Lending institutions may be unwilling to loan money for development projects until they have assurance that the lands involved have been annexed into the city where the development is proposed to occur.

This could create a “Catch 22” situation in which the developer can't pay the mitigation fees until they have obtained the loan, and they can't obtain the loan until they pay the mitigation fees.

- b. Since most urban service area expansion proposals encompass more than just one property and more than one owner, the “conditional approval” policy could create situations where the development plans of a number of property owners in the proposed USA expansion area could, in effect, be held hostage by one or more property owners in that area who were unable or unwilling to pay their agricultural mitigation fees.

Under those conditions, the property owners who were ready to pay their mitigation fees and proceed with development would not be able to do so because they cannot get annexed to the city until LAFCO has issued a “Certificate of Completion” for the USA expansion – which could not occur, under LAFCO's proposed policies, until all the agricultural mitigation fees for all of the properties had been paid.

Various other such examples could be presented illustrating the difficulties of making “conditional approval” of a USA expansion work in the “real world” where multiple parcels and multiple property owners are involved, and where it is often difficult, if not

impossible, to know with great certainty how much time may elapse between the time that lands are brought into a city's urban service area and when they will be developed.

The basic point to be made here is that the "conditional USA expansion approval" concept does not seem to be workable, except perhaps in a few cases where there is a single parcel involved, whose owner is ready to proceed with development soon after the USA expansion and annexation to the city have been approved.

Consequently, it does not appear to be reasonable from the perspectives of the cities or the landowners and developers. Achieving a consensus outcome that includes these major stakeholders will be difficult unless an alternative to the "conditional USA expansion approval" concept is adopted.

One potential solution that would probably be acceptable to these stakeholders would be for the cities to adopt ordinances requiring that agricultural mitigation fees must be paid, for example, when the subdivision map or development plan is approved or, alternatively, prior to the issuance of building permits. The cities' policies for when they require the payment of school impact fees might serve as a model for when agricultural mitigation fees should be collected for residential projects.

8. Three Concerns Regarding *Effectiveness*

While landowners, developers, and the cities have been most concerned about the *reasonableness* of LAFCO's proposed agricultural mitigation policies, LAFCO, the environmental advocacy organizations, and potential mitigation implementors have been primarily concerned about the *effectiveness* of the implementation of these policies by the cities.

This concern is particularly relevant since, under California state law, LAFCO relinquishes its control over the annexation of these lands once LAFCO has approved the urban service area boundary expansion.

Within the discussion over effectiveness, three basic issues have arisen:

- a. How can LAFCO and others be assured that the cities will follow through with the implementation of LAFCO's agricultural mitigation policies after LAFCO has approved an urban service area boundary expansion?
- b. How can the process of determining which lands will require agricultural mitigation if/when they are developed be made more transparent, consistent, predictable, and accessible?
- c. How to assure that agricultural mitigation fees will be set sufficiently high to assure that they will cover the costs associated with:
 1. Purchase of agricultural conservation easements (including acquisition costs, as well as long term monitoring and enforcement costs) and/or
 2. Purchase of fee title to agricultural lands (including acquisition costs, as well as long term land management costs), and
 3. Programs and activities to support and promote local agriculture

9. Providing Assurance that Cities Will Follow Through with Mitigations

As indicated above, the currently proposed mechanism for assuring that cities and developers follow through with agricultural mitigation involves the use of “conditional approval” of urban service area expansions.

That approach, as also indicated above, does not seem reasonable or workable to several of the key stakeholder groups, including cities, landowners, and developers.

FROG, which also is concerned about assuring that adequate and effective mitigation occurs, agrees that the “conditional approval” approach is problematic for a number of reasons.

As an alternative, FROG suggests that each city, as part of the “Plan for Mitigation” it submits to LAFCO, include, among other things:

- a. The city’s adopted ordinance that requires that agricultural mitigation fees must be paid at the time that building permits are issued, or at some other appropriate time earlier in the development approval process.
- b. A description of the city’s building permit issuance process that spells out the city’s procedures for assuring that no building permits will be issued until required agricultural mitigation fees have been paid, and
- c. Copies of the city’s current building permit sign off form or other appropriate documents that clearly require city staff to determine whether agricultural mitigation fees have been paid before they issue building permits for a project

Note: The above assurances would also be accompanied by an agreement between the city and an appropriate agricultural mitigation implementor (as already called for in LAFCO’s draft agricultural mitigation policies).

The agreement should indicate that the public agency or nonprofit organization has agreed to accept the agricultural mitigation fees collected by the city and use them to implement mitigation programs consistent with the city’s and LAFCO’s agricultural mitigation policies.

Although that alone would not provide absolute assurance that a city would not change its agricultural mitigation policies or ordinances after LAFCO approves its urban service area expansion request, it seems like a reasonable, workable approach.

10. Agricultural Mitigation Process Should Be Transparent, Consistent, Predictable, and Accessible

A second area of concern regarding the effectiveness of LAFCO’s proposed agricultural mitigation policies has to do with the way it is determined which agricultural lands must be mitigated if they are to be developed.

FROG believes that the method for making this determination should be transparent, consistent, predictable, and accessible.

By “transparent” we mean that the determination of which lands must be mitigated if they are developed, should occur in an open, observable public process.

Friends of the Coyote Valley Greenbelt (FROG) • PO Box 7665 • San Jose CA 95150

By “consistent” we mean that the method for determining which lands must be mitigated should be consistent throughout the county.

By “predictable” we mean that agricultural mitigation requirements should be established on an equitable, citywide basis, not a case-by-case, parcel-by-parcel basis.

By “accessible” we mean that it should be easy for everyone to obtain accurate information regarding which lands must be mitigated if they are developed.

The best way to achieve these goals, FROG believes, would be for LAFCO to prepare and adopt, along with its agricultural mitigation policies, an official, countywide map indicating which lands currently outside city urban service area boundaries must be mitigated if they are proposed for inclusion within a city’s urban service area.

11. Establishing Adequate Agricultural Mitigation In Lieu Fees

Although LAFCO’s draft agricultural mitigation policies provide several alternative ways that developers could fulfill their agricultural mitigation obligations, it appears to FROG that the payment of in lieu fees is most likely to be the preferred alternative, both for developers and for the mitigation implementation agencies/organizations.

Establishing the amounts of these fees, which could potentially vary from city to city, will be an important and potentially complex task that, ultimately, will most likely be arrived at through negotiations between individual cities and agricultural conservation agencies or organizations, with input from developers and the community at large.

We raise the issue in this letter simply to acknowledge its eventual importance.

FROG has no specific recommendation regarding the magnitude of such fees, other than they should be adequate to cover both short and long term costs, as well as programmatic costs associated with supporting and promoting local agriculture in Santa Clara County, and there should be provisions for periodically reviewing and raising them, if warranted.

12. The Essential Ingredients for a Consensus Solution

Achieving broad stakeholder consensus on LAFCO agricultural mitigation policies will require at least two essential ingredients:

- a. A revised LAFCO agricultural mitigation policies draft that addresses the major issues outlined in this letter, and
- b. A willingness among stakeholders to try to achieve consensus in support of a balanced, reasonable, and effective set of LAFCO agricultural mitigation policies

Responsibility for the first ingredient lies primarily with LAFCO and its staff.

Responsibility for the second ingredient lies with each of the individual stakeholders who have been or will become part of this dialogue regarding LAFCO agricultural mitigation policies.

It is FROG's sincere hope that all stakeholders will see the benefits of pursuing a consensus solution and will make constructive efforts to help bring it about.

SUMMARY OF FROG RECOMMENDATIONS

Pursuit of a Consensus Solution

1. Seek to resolve the remaining issues in ways that will achieve a broad consensus of support among the major stakeholders.

Addressing Concerns Regarding Reasonableness

2. Replace the proposal for “conditional approval” of urban service area boundary expansions with one that requires cities to demonstrate that agricultural mitigation obligations will be fulfilled by developers at the time that their subdivision map or development plans are approved or, alternatively, before they are issued building permits for their projects.

Addressing Concerns Regarding Effectiveness

3. [same as #2 above]
4. Prepare and adopt along with LAFCO's agricultural mitigation policies an official map indicating which lands currently outside city urban service area boundaries must be mitigated if they are proposed for inclusion in a city's urban service area.

Make the official, countywide agricultural mitigation map readily available to the cities, landowners, developers, and the community at large.

File: FROG Ag Mit Ltr 1_15_07.doc



LAFCO of Santa Clara County
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

January 16, 2007

RE: LAFCO's Proposed Agricultural Mitigation Policies

Dear Ms. Neelima Palacherla,

Greenbelt Alliance commends LAFCO's pursuit of county-wide agricultural mitigation policies and remains very supportive of these efforts. Cities should be encouraged to grow within their boundaries, to use land more efficiently and to revitalize their downtowns and transit corridors. At the same time, the conversion of farmland to urban uses should be viewed as an absolute last resort. Farmland is an irreplaceable and valuable resource providing locally grown fresh produce. Communities can accommodate growth by building more compactly and thinking upwards instead of outwards.

To that end, Greenbelt Alliance would like to reiterate support for several elements within the agricultural mitigation policies.

Section 7 Definition of Prime Agricultural Lands: Fallow agricultural lands should be included within this definition. This would close the loophole that allows landowners to leave their land fallow for several years, thereby avoiding mitigation. Greenbelt Alliance also supports the statement by Melissa Hippard in her letter from the Sierra Club that the CA Department of Conservation's Santa Clara County Important Farmlands map be included in the definition.

Mitigation Requirements: Greenbelt Alliance supports nothing less than 1:1 mitigation for lands converted to urban uses and supports a higher ratio when lands with significant habitat or value are lost. In these cases, a ratio closer to 1.3:1 would address these concerns. Even with mitigation, only half of the County's remaining farmland will be preserved through these policies.

Timing and Fulfillment: Again, we would like to echo the Sierra Club in seeing that the policies tie approval of an USA expansion to certification of completion (of mitigation) of previous approvals and that a deed restriction be placed on newly incorporated properties so that all parties involved are aware of the mitigation requirement.

Greenbelt Alliance appreciates the opportunity to comment on the proposed policies and looks forward to seeing them approved. LAFCO is tasked with promoting orderly growth, preventing urban sprawl and preserving open space and agricultural lands. These proposed policies further that mission.

Sincerely,

Michele Beasley
South Bay Field Representative

January 12, 2007

Neelima Palacherla
Local Agency Formation Commission of Santa Clara County
70 West Hedding Street, 11th Floor, East Wing
San Jose, CA 95110
Email: neelima.palacherla@ceo.sccgov.org; dunia.noel@ceo.sccgov.org
Fax: (408) 295-1613

RE: Comments on Local Agency Formation Commission of Santa Clara County (LAFCO) Revised (12/06/06) Draft Agricultural Mitigation Policies regarding “Plan for Mitigation” and “Timing and Fulfillment of Mitigation”

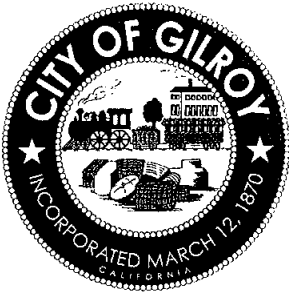
Dear Ms. Palacherla:

City of San Jose staff requests that the comments provided previously by the City of San Jose be considered by the LAFCO Subcommittee when the Subcommittee revisits the draft language of the Agricultural Mitigation Policies, as revised December 6, 2006, including the text for the “Plan for Mitigation” and “Timing and Fulfillment of Mitigation”. In particular, we request that the letter from former Mayor Ron Gonzales, on behalf of the San Jose City Council, dated December 12, 2006, be considered and, as soon as possible, posted on the LAFCO web page with the other responses that are already posted. This will facilitate review of the suggestions by other interested parties who intend to participate in the meeting on January 24th.

I look forward to seeing you and attending the Subcommittee meeting on the 24th. If you have questions or comments prior to that meeting please contact me at (408) 535-7800. Thank you.

Sincerely,

Jenny Nusbaum, Senior Planner
Department of Planning, Building & Code Enforcement



City of Gilroy

COMMUNITY DEVELOPMENT DEPARTMENT

7351 Rosanna Street, Gilroy, CA 95020

Planning Division	(408) 846-0440	FAX: (408) 846-0429
Engineering Division	(408) 846-0450	FAX: (408) 846-0429
Building, Life & Environmental Safety Division	(408) 846-0430	FAX: (408) 846-0429
Housing & Community Development	(408) 846-0290	FAX: (408) 846-0429

January 12, 2007

ATT: LAFCO sub-committee - proposed Ag Policy
Local Agency Formation Commission
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

Re: Proposed Agricultural Mitigation Policy

Dear LAFCO;

Thank you for the opportunity to comment on the latest draft of the proposed Agricultural Mitigation Policy. We are especially pleased to hear that the LAFCO sub-committee has scheduled a meeting in South County. This is a significant gesture for many South County stake holders, as the proposed policy affects the entire South County region in so many important ways.

Notwithstanding all other prior comments expressed on the proposed policy, the following comment is considered one of our most significant concerns, and represents an important communication bridge that has not been crossed so far.

- Following two years of comprehensive study and deliberation by a large agricultural stake-holder task force, the City of Gilroy adopted an Agricultural Mitigation Policy on May 3, 2004 [*Which is currently, by far, the most comprehensive agricultural mitigation policy in Santa Clara County*]. This policy was the product of our City's General Plan update and environmental review process. LAFCO had significant input here, both at the General Plan development & mitigation stage and during policy formulation. The current LAFCO policy fails to recognize this important "South County" policy. Gilroy would strongly suggest that the proposed LAFCO policy work in parallel with the City's detailed agricultural policy and not totally ignore the significant achievements made by many agricultural stakeholders in the development of our "South County" Gilroy policy.

Gilroy truly believes that our two Agricultural Policies can work in tandem - with a little more work - and respect for all stakeholders that have come to the discussion table. We appreciate the opportunity to comment here and look forward to reviewing the next policy product.

Respectfully submitted;

William Faus

Planning Division Manager

bflaus@ci.gilroy.ca.us



San Mateo, Santa Clara & San Benito Counties

Neelima Palacherla, Executive Officer
LAFCO
County Government Center, 11th Floor, East Wing
70 West Hedding Street
San Jose, CA 95110

January 12, 2007

Ms. Palacherla,

The Sierra Club continues to be excited about Santa Clara County LAFCO's progress towards adopting agricultural mitigation policies. In light of the remaining 39,000 acres of prime agricultural land in Santa Clara County these policies are critical for ensuring the permanent viability of agriculture in the county. Not only will preserving prime agricultural lands be good for agriculture it is important for other conservation goals.

Slowing global warming is one of the Sierra Club's priority conservation efforts and the Loma Prieta chapter is focusing a large part of our resources on this goal locally. The agricultural sector has the potential not only to reduce their share of the greenhouse gas (GHG) emissions but also can significantly reduce net U.S. GHG emissions from other sectors. Carbon stocks in agricultural soils are currently increasing by 12 million metric tons (MMT) of carbon annually. If farmers widely adopt the best management techniques now available, an estimated 70 to 220 MMT of carbon could be stored in U.S. agricultural soils annually. Together with attainable nitrous oxide and methane reductions, these mitigation options represent 5 to 14 percent of total U.S. GHG emissions.¹ Santa Clara County can pursue local solutions to local GHG emissions by supporting strong agricultural mitigation policies and keeping agriculture viable.

In response to the most recent (12/6/2006) draft policies we would like to submit the following comments:

Section 7 Definition of Prime Agricultural Lands – the CA Department of Conservation's Santa Clara County Important Farmlands map must be included in the definition. This map provides a useful tool for the public, cities, and developers to quickly identify the lands covered by the new policies. These maps are widely used and are not subject to interpretation. Recognizing that on the ground conditions change over time we

¹ For more information about Agriculture's Role in Greenhouse Gas Mitigation please download this report by the Pew Foundation from http://www.pewclimate.org/global-warming-in-depth/all_reports/agriculture_s_role_mitigation/index.cfm

recommend that language be included to allow an applicant to challenge the definition of their land as prime. This opportunity must be guided by the definitions provided in the Cortese Knox Hertzberg Act and be at the applicant's expense.

Mitigation Requirements – a minimum of 1:1 mitigation is necessary. However, there are two reasons to consider a minimum of 1.3:1. Because all land is not equal it will be hard and harder over time, to find adequate land to replace land lost to development. Furthermore, some lands are just more valuable than others and their loss represents a unique loss. We would like to see some means for considering an application of a higher ratio of mitigation that addresses these concerns.

Timing and Fulfillment – we recognize the difficulty presented by the realities of growth and development. Given there are substantial opportunities for cities to grow within their existing urban footprints we wholly support LAFCO retaining control to the extent of their legal authority. To achieve this we would like to see the policies provide for the following:

- Tie approval of USA expansion to certification of completion of previous approvals. We suggest the following two step process: a city must present a mitigation plan consistent with the policies with their request for a USA expansion. If the plan meets the policy then they are given a conditional certificate. Once the mitigation is complete the city can apply for the certification of completion which would allow them to apply for another USA expansion.
- Deed restriction on lands moved into the new urban service area. Because of the lengthy time between application/approval of this step and the actual development it is critical to link the promise of mitigation to the land.

We applaud LAFCO commissioners and staff for their commitment to preserving agriculture in Santa Clara County. It is not too late to ensure the permanent protection of our agricultural heritage and provide for future food security and address global warming.

We look forward to continuing to work with you on this important issue.

Melissa Hippard
Chapter Director

Save Open Space Gilroy
1495 E. Hillview Ct.
Gilroy, CA 95020

Friday, January 12, 2007

Neelima Palacherla, Executive Officer
Local Agency Formation Commission
70 West Heading Street
11th Floor, East Wing
San Jose, CA 95110

Dear Ms. Palacherla:

Enclosed please find a signed copy of the agricultural policy revision comment letter that SOS-Gilroy sent to you on Friday January 12, 2007 via email. Again, we very much appreciate the opportunity to submit our input on this important new policy. We look forward to its' adoption.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. Collier". The signature is fluid and cursive, with the first name "David" being the most prominent part.

David C. Collier

Save Open Space Gilroy
1495 E. Hillview Ct.
Gilroy, CA 95020

Thursday, January 11, 2007

Santa Clara County LAFCO Members
Local Agency Formation Commission
70 West Heading Street
11th Floor, East Wing
San Jose, CA 95110

Re: Suggested revisions to the LAFCO Agricultural Mitigation Policy

Dear LAFCO Members:

Save Open Space Gilroy appreciates the opportunity to submit some final comments on Policy #14 & #19 of the revised agricultural mitigation policy since we see a serious problem with the in-lieu fees option that could undermine the effectiveness and success of the program.

The problem that we see can be best illustrated by the following likely scenario:

- First, an Urban Service area proposal is approved and within the specified 3 to 4 years the in-lieu fees are paid there-by satisfying the required mitigation set forth by LAFCO
- With mitigation dollars in the bank the agricultural conservation entity now goes looking for willing sellers in their target area close to the boundaries of the city (policy #10) but they are unsuccessful in finding such willing sellers due to a sharp increase in the speculative value of equivalent land in the intervening 3 to 4 years. In short, all landowners in the target area are now holding out for the more lucrative development dollars.
- Now another Urban Service Area proposal comes before LAFCO in the target area. It happens to be a great smart growth project with lots of included affordable housing and public amenities. The question then becomes whether LAFCO will hold up this great project simply because no willing sellers have been found to complete the previous mitigation. The likely answer will be NO since, after all, the in-lieu fees for the mitigation have already been paid and the development community has fully met their obligations under the LAFCO policy.

This scenario then is likely to be played out over many approved projects with little or no equivalent prime agricultural lands actually being preserved. The end result of this process could very well be a pile of mitigation money sitting in some bank account while the rest of Santa Clara County's prime farmland is paved over. SOS-Gilroy does not

believe that this is the intent of the new policy nor will it satisfy anyone, including the development community who will feel penalized for no redeeming purpose.

So, how should the policy be revised to deal with this problem? SOS-Gilroy sees three possible options which are given below with discussion:

1. Eliminate the in-lieu mitigation option.

From the point of view of the agricultural lands conservation program this is undoubtedly the preferred option for it leaves no uncertainty as to what lands will be protected at the time of a USA application. It also has the merit of placing the responsibility of agriculture preserve definition and development into the hands of those with the know-how and connections, namely the land development community itself. SOS-Gilroy, however, recognizes that in-lieu fees may still be the preferred mitigation route among land developers.

2. Set the in-lieu mitigation fees high enough so that they compete with what the speculative value of targeted equivalent land could be in four years.

If we always knew exactly what the market value of equivalent well-placed prime agricultural lands would be in four years then in-lieu fees would be an excellent option for mitigation – but we don't. Unfortunately, to have a good chance of meeting the goals of this policy, in the face of an uncertain future, it will be necessary to set the in-lieu fees into the upper reaches of what the speculative market value of equivalent land (in both size and location) could be in four years (the maximum time interval before payment is absolutely required). This may be more than the development community is willing to bear and, indeed, would be an unfair burden if the land market does not appreciate as forecasted.

If this, however, is the accepted LAFCO revision to the policy then SOS-Gilroy recommends specific language be incorporated into Policy # 14 to indicate how the appropriate in-lieu fees were determined. The revised wording could be something like (w/ revisions in italics): “ ... with this Policy. *If in-lieu fees are to be the chosen mitigation mode then documentation will be provided to show the insured adequacy of the set in-lieu fee to meet the policy's goals in four years. This documentation shall include an extrapolation of expected market values of target mitigation lands over the four year period.* The agreement ...”

3. Require the mitigation of a city's previous USA application to be fully finalized, with the actual purchase of agricultural land or easements, before the next one is approved.

The benefit of this requirement would be the generation of pressure from within the development community to adequately meet the mitigation of previous projects. It is our guess that willing sellers would appear under these circumstances and true preservation of prime agricultural lands would occur. In

effect, this requirement makes the option of in-lieu fees similar to the other options of the actual purchase of land or development rights with the difference being that more flexibility is given over the four years in identifying what lands will be permanently set aside.

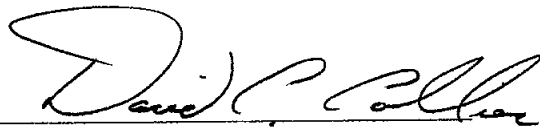
SOS-Gilroy suggests that if this was the desired revision that it could be incorporated into the language of policy #19 in the following manner:

Policy #19: LAFCO will not accept other USA amendment proposals from the city until the agricultural mitigation for the city's previous USA approvals is finalized through the actual purchase of mitigation lands or conservation easements.

This is essentially the original language of Policy #19 but with the additional clarification of what provision of previous agricultural mitigation means.

SOS-Gilroy hopes these observations and suggestions are helpful to LAFCO in formulating a workable and effective program of prime agricultural land conservation for Santa Clara County. We applaud your efforts.

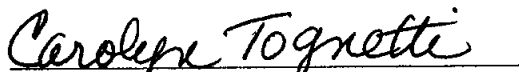
Sincerely,



David Collier, SOS-Gilroy



Connie Rogers, SOS-Gilroy



Carolyn Tognetti, SOS-Gilroy

1/12/07

LAFCO Commissioners
Neelima Palacherla, Executive Officer
LAFCO staff
c/o Emmanuel Abello, LAFCO Clerk

Requested public input on LAFCO's draft policy "Plan for Mitigation" and "Timing and Fulfillment of Mitigation" sections by today's date, 1/12/07

Plan for Mitigation

- 12/6 Draft item # 13. A plan for [open space habitat/nature and] agricultural mitigation that is consistent with this Policy must be submitted at the time that the proposal impacting [open space habitat lands and/or] agricultural lands is filed [and the application fees are paid.]

12/6 Draft item # 14 The plan for mitigation shall include all of the following:

- 12/6 Draft item # 14 a. An agreement between the property owner(s) and the city or between the property owner, city and [the open space habitat/nature or] agricultural conservation entity [that belongs to the Land Trust Alliance] (if such an entity is involved)... ... mitigation for the loss of [open space habitat/nature lands and] prime agricultural lands ...
- 12/6 Draft item # 14 a. continued ... Upon LAFCO's conditional approval, the agreement must be recorded with the County Records' Office against the property to be developed [and against the property that is mitigated, preserved, or set aside]

Timing and Fulfillment of Mitigation

12/6 Draft item # 15. (Change back LAFCO Draft items #15, as previously written with the [two (2)] years of conditional approval. (that is 24 full months to comply which is enough time for the serious acquisition of the replacement open space habitat lands or agricultural lands or conservation easements to be acquired and transferred or the [3:1] in-lieu fees be paid, or the conditional approval may expire without any extensions.)

- 12/6 Draft item # 15. LAFCO will require as a condition of approval that the **[open space habitat/nature lands and the]** agricultural lands or conservation easements be acquired and transferred or the **[3:1]** in-lieu fees be paid within **[two (2)]** years of LAFCO's conditional approval.

12/6 Draft item # 17. (Change back LAFCO Draft items #17, as previously written with the **[two (2)]** years of conditional approval)

- 12/6 Draft item # 17. If the conditions of approval are not met within **[two (2)]** years, **[the conditional approval will expire unless the]** applicant **[pays the additional extension fees and re-applies]** to LAFCO **[within the last six (6) months of the initial two (2) year initial conditional approval period]** for **[a LAFCO]** extension **[including demonstrating the continuing active pursuit of the required land mitigation, and the demonstrated actual need for a LAFCO approved extension]**, not to exceed **[a maximum of one (1) additional]** year. **[All]** further consideration by LAFCO will require a new application **[and the payment of all new application fees. No additional extensions will be considered or allowed by LAFCO.]**
- 12/6 Draft item # 19. ... involving **[open space habitat/nature lands and]** agricultural lands if **[open space habitat/nature land mitigation and]** agricultural mitigation has not been completed for the city's previous approvals. Status of pending **[open space habitat/nature lands mitigation and]** agricultural mitigation will be a **[negative]** factor that involving **[open space habitat/nature lands and]** agricultural lands.

As a follow up to my presentation and recommendation letter to the Commissioners dated December 6, I am recommending the following specific Commission actions and summarizing specific benefits based on the adoption of recommendations.

Recommended Commission Actions:

- Open Space lands and Fallow Lands be included in all sections of the adopted LAFCO land mitigation policy along with prime agricultural land at no less than a 2:1 ratio, two (2) acres preserved for every one (1) acre converted

- Provide in-lieu mitigation fees at no less than a 3:1 ratio, three (3) acres preserved for every one (1) acre converted to an Open Space/Nature conservation Trust entity or agricultural conservation Trust entity with the standards of the Land Trust Alliance
- Provide two (2) years for mitigation completion with a possible 1-year extension based on a proven record of genuine compliance and a proven extension need by the applicant
- Provide for Open Space education and native plant and native animal restoration programs for the mitigated Open Space Habitat Lands and the Fallow Open Space Lands

The Benefits to the Local Farmers:

- The protection and preservation of mitigated Open Space, especially Fallow Lands, benefits the farmers directly by providing a agricultural land bank on the rural edges of the County's cities
- The mitigated preserved lands will provide protected lands for local food production and the protection of the agricultural way of life
- The mitigated preserved lands will provide protected lands for native species such as the endangered Burrowing Owl which feed on rodents protecting agricultural crops

The Benefits to the Local Communities and to the County:

- The protection and preservation of mitigated Open Space, especially Fallow Lands, benefits the local communities by providing a agricultural land bank on the rural edges of the County's cities for open space habitat education, for local farming, and for farming education.
- The Open Space mitigated land will attract people to the County's Open Space communities.

Benefits The Benefits to Santa Clara County:

- The protection and preservation of mitigated Open Space including the fallow and the mitigated agricultural lands benefits the local environment directly by providing a agricultural and open space land bank on the rural edges of the County's cities for all the County citizens to cherish and enjoy.
- "The valley of hearts content" can still be enjoyed by our future generations, if we commit to it now by preserving Open Space and agricultural lands through mitigation!

The Benefits to the local Environment:

- The protection and preservation of mitigated Open Space including the fallow and agricultural lands benefits the local environment directly by providing a agricultural and Open Space Nature Preserve on the rural edges of the County's cities for the reintroduction of native plants and animals to be enjoyed by our future generations.

As an unincorporated Santa Clara County property owner, I am in strong support of the adoption of LAFCO's Agricultural Mitigation Policies at today's hearing.

I also request that my suggested policy changes and the inclusion of required open space land mitigation to the December 6th draft LAFCO Agricultural Mitigation Policy be considered and adopted today. I'm presenting my suggested changes and recommendations directly to you today, February 13, 2007, for your individual and the Commission's consideration and adoption action. I further request that my Commission's agricultural mitigation policy adoption support and written policy requested changes be part of today's hearing minutes and record.

The current December 6th draft needs to include the mitigation of a broad range of open space lands and overlooks and fails to address the protection and preservation of the valuable open space habitat lands, including fallow (unseeded) agricultural open space lands. A planted orchard is considered agricultural land, but is not considered open space or open space habitat land whereas a fallow field is considered open space land and needs to be specifically included, protected, and preserved in the LAFCO mitigation policy to protect those valuable habitat lands.

Focusing on the stated LAFCO mission of protecting and preserving the remaining open space and the prime agricultural lands, it is very apparent to me that LAFCO needs to strengthen the proposed draft of LAFCO's Agricultural (and Open Space) Mitigation Policies by including open space habitat land protection and preservation, and by making the preserved ratio 2 acres preserved for every one

acre converted instead of the proposed 1:1 ratio. The following changes must be added to strengthen the December 6th draft policy:

Modify (indicated by brackets [] and bold underlining) the first 12/6 draft mission paragraph statement to read:

- LAFCO's mission is to discourage urban sprawl, preserve open space [**habitat lands, including fallow (unseeded) agricultural open space lands,**] and prime agricultural lands, promote the efficient provision of government services and encourage the orderly formation of local agencies...

Modify the second 12/6 draft mission paragraph to read:

- It is the intent of LAFCO to set forth through written policies, LAFCO's standards and procedures for providing [**open space habitat land, including fallow (unseeded) agricultural open space land, and prime**] agricultural [**land**] mitigation for LAFCO proposals involving [**open space habitat lands, including fallow (unseeded) agricultural open space lands, and prime**] agricultural lands, consistent with LAFCO's current policies and LAFCO's mandate.
- LAFCO must make air-tight definitions of the terms and restrictions used in the mitigation policy as did the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, including adding a definition section to the document.

My recommended changes of the following December 6th draft General Policies are indicated by the brackets [] and bold underlining:

- 12/6 Draft item # 1. LAFCO'S Agricultural Mitigation Policies establishes minimum criteria and standards for providing [**open space habitat land, including fallow (unseeded) agricultural open space land, and**] agricultural [**land**] mitigation for LAFCO proposals involving [**open space habitat lands, including fallow agricultural open space lands, and prime**] agricultural lands.
- 12/6 Draft item # 2. LAFCO requires [**open space and**] agricultural mitigation as specified herein for all LAFCO applications that impact or result in loss of [**open space habitat lands, including fallow (unseeded) agricultural open space lands, and**] prime agricultural lands. Prime agricultural lands [**are**] defined in Policy # 75.

- 12/6 Draft item # 4. When LAFCO proposal impacts or involves a loss of [open space habitat lands, including fallow (unseeded) agricultural open space lands, and] prime agricultural lands, ...

Definition of Prime Agricultural Lands

- 12/6 Draft item # 7. section a. Land [may qualify,] ...
- 12/6 Draft item # 7. section b. Land [may qualify if rated] ...
- 12/6 Draft item # 7. section c. must be omitted because the section is too vague, the type of livestock is not identified, no known unincorporated non-irrigated acreage can support one cow per acre. (Delete this section to avoid unethical land manipulation of years, livestock numbers, or monetary amounts just to avoid this required mitigation and avoid legal challenges)
- 12/6 Draft item # 7. section d. needs to be shortened to state: "Land planted with fruit or nut-bearing trees, vines, bushes, or crops." (This will avoid unethical land manipulation of years or monetary amounts prior to applying just to avoid this required mitigation and avoid legal challenges)
- 12/6 Draft item # 7. section e. needs to be shortened to state: "Land that has returned from the production of unprocessed agricultural plant products." (This will avoid unethical land manipulation of years or monetary amounts prior to applying just to avoid this required mitigation and avoid legal challenges)
- 12/6 Draft item # 7 needs to have an **item # 7 f. added** that states: [**7 f. "All land that has the potential to be productive agricultural land"**] (This will avoid land manipulation prior to applying just to avoid this required mitigation and avoid legal challenges)

After 12/6 Draft item # 7 a **new section number 8** needs to be added.

- **Section [8 Definition of Open Space Habitat Lands.] [Protection and preservation of all habitat lands that are undeveloped, undisturbed, or lie fallow (unseeded), or unused for crops or agriculture of any kind are valued for its natural open space setting and are valued for providing an open space habitat that may be utilized by native plants and animals (such as the burrowing owl) and by re-introduced native plants and animals.]**

Mitigation Requirements

- 12/6 Draft item # 8. Proposals involving the conversion of [open space habitat lands, including fallow agricultural open space lands, and] prime agricultural lands shall not be approved unless one of following mitigations is provided at a not less than [2:1 preservation] ratio (two (2) acres) preserved for every [one (1)] acre converted...
- 12/6 Draft item # 8.a. The acquisition and transfer of ownership of [open space habitat land, including fallow (unseeded) agricultural open land, and prime] agricultural land to an [open space/nature Trust and/or] an agricultural conservation [Trust] entity [belonging to the Land Trust Alliance] ...
- 12/6 Draft item # 8. b. The acquisition and transfer of [an open space/nature Trust or an] agricultural conservation easement to an [open space/nature Trust or an] agricultural conservation [Trust] entity [with the standards of the Land Trust Alliance] for permanent protection of the [open space habitat land, including fallow agricultural open space land, and prime] agricultural land.
- 12/6 Draft item # 8. c. The payment of in-lieu fees [at not less than a ratio of 3:1 (three (3)) acres preserved for every one (1) acre converted] to an [open space/nature Trust or] agricultural conservation [Trust] entity [with the standards of the Land Trust Alliance] ...
- 12/6 Draft item # 8. c. 1. The acquisition of [open space habitat lands, including fallow agricultural open space lands, and/or prime] agricultural lands or [open space/nature and] agricultural conservation easements for permanent protection, and
- 12/6 Draft item # 8. c. 2. The cost of administering, managing, monitoring, and enforcing the [open space habitat lands, including the fallow agricultural open space lands, and/or prime] agricultural lands or [open space habitat lands, including fallow agricultural open space lands, and/or] agricultural conservation easements as well as the costs of promoting [open space habitat lands, including open space habitat education and supervised programs of volunteers to eradicate invasive non-native species (such as the Star Thistle) and the re-introduction of native plant and animal species to the mitigated open space habitat lands including the fallow agricultural]

lands (such as the Burrowing Owl), and] agriculture on the mitigated [agricultural] lands.

- 12/6 Draft item # 9. [Open space habitat lands and] agricultural lands or conservation easements acquired and transferred to an [open space/nature Trust or] agricultural conservation [Trust] entity must be located in Santa Clara County ...
- 12/6 Draft item # 10. The [open space and] agricultural mitigation [must] result in preservation of land that [will] promote the definition [and] creation of a permanent [open space habitat edge and/or] agricultural edge and must be:
- 12/6 Draft item # 10 a. [Open space habitat land and/or] agricultural land of equivalent [or better] quality and character ...
- 12/6 Draft item # 10 b. Located within the city's sphere of influence in an area Planned/envisioned for [open space habitat and/or] agriculture [that would otherwise be threatened / impacted in the reasonably foreseeable future by development, and] ...
- restore 12/6 Draft item # 10. c. [Will promote the definition and/or creation of a permanent urban / [open space habitat lands including fallow agricultural lands, and/or agricultural edge or contribute to a local open space environmental nature conservation preserve project such as the Nature Conservancy's Pajaro River Soap Lake Preserve.]

restore 12/6 Draft item # 11. ... (remove: encourages – restore) [requires]

- 12/6 Draft item # 11 a. Establishment of an [open space habitat and/or] agricultural buffer...
- 12/6 Draft item # 11 a. continued ... LAFCO [requires] (delete “encourages”) ...
- 12/6 Draft item # 11 a. continued ...(add back in must) Such measures [must] include, but are not limited to:
- 12/6 Draft item # 11 c. Development of programs to promote the continued viability of the surrounding [open space habitat land and/or] agricultural land.

Add a new section item # 11 d. [Development of an open space education program and supervised volunteer programs for the removal of invasive

non-native plants and animals and the reintroduction of native plants and animals (such as the burrowing owl) to the open space habitat lands including fallow agricultural lands.]

- **[Open Space Habitat /] Agricultural Conservation Entity Qualifications**
- 12/6 Draft item # 12. The [**open space habitat/nature and/or**] agricultural conservation entity must be a city or a public or non-profit agency [**such as the Land Trust Alliance**]. The [**open space habitat/nature and/or**] agricultural conservation entity must:
 - 12/6 Draft item # 12. a. Be committed to preserving local [**open space habitat and**] local agriculture and must have a clear mission along with strategic goals or programs for promoting [**open space habitat/nature and**] agriculture in the areas that [**are**] preserved through mitigation.
 - 12/6 Draft item # 12. b. Have the legal and technical ability to hold and administer [**open space habitat/nature lands and**] agriculture lands and [**open space habitat/nature and**] agricultural conservation easements and in-lieu fees for the purpose of conserving and maintaining [**open space habitat/nature lands and**] lands in agricultural ...
 - 12/6 Draft item # 12. c. Have adopted written standards, policies and practices [**as high**] as the Land Trust Alliance's ... for holding and administering [**open space habitat/nature lands and**] and agricultural lands, [**open space habitat/nature and**] agricultural conservation easements ...

Plan for Mitigation

- 12/6 Draft item # 13. A plan for [**open space habitat/nature and**] agricultural mitigation that is consistent with this Policy must be submitted at the time that the proposal impacting [**open space habitat lands and/or**] agricultural lands is filed [**and the application fees are paid.**]

12/6 Draft item # 14 The plan for mitigation shall include all of the following:

- 12/6 Draft item # 14 a. An agreement between the property owner(s) and the city or between the property owner, city and [**the open space habitat/nature**]

or] agricultural conservation entity [**that belongs to the Land Trust Alliance**] (if such an entity is involved)... ... mitigation for the loss of [**open space habitat/nature lands and**] prime agricultural lands ...

- 12/6 Draft item # 14 a. continued ... Upon LAFCO's conditional approval, the agreement must be recorded with the County Recorders' Office against the property to be developed [**and against the property that is mitigated, preserved, or set aside**]

Timing and Fulfillment of Mitigation

12/6 Draft item # 15. (Change back LAFCO Draft items #15, as previously written with the [**two (2)**] years of conditional approval. (that is 24 full months to comply which is enough time for the serious acquisition of the replacement open space habitat lands or agricultural lands or conservation easements to be acquired and transferred or the [**3:1**] in-lieu fees be paid, or the conditional approval may expire without any extensions.)

- 12/6 Draft item # 15. LAFCO will require as a condition of approval that the [**open space habitat/nature lands and the**] agricultural lands or conservation easements be acquired and transferred or the [**3:1**] in-lieu fees be paid within [**two (2)**] years of LAFCO's conditional approval.

12/6 Draft item # 17. (Change back LAFCO Draft items #17, as previously written with the [**two (2)**] years of conditional approval)

- 12/6 Draft item # 17. If the conditions of approval are not met within [**two (2)**] years, [**the conditional approval will expire unless the**] applicant [**pays the additional extension fees and re-applies**] to LAFCO [**within the last six (6) months of the initial two (2) year initial conditional approval period**] for [**a LAFCO**] extension [**including demonstrating the continuing active pursuit of the required land mitigation, and the demonstrated actual need for a LAFCO approved extension**], not to exceed [**a maximum of one (1) additional**] year. [**All**] further consideration by LAFCO will require a new application [**and the payment of all new application fees. No additional extensions will be considered or allowed by LAFCO.**]
- 12/6 Draft item # 19. ... involving [**open space habitat/nature lands and**] agricultural lands if [**open space habitat/nature land mitigation and**] agricultural mitigation has not been completed for the city's previous

approvals. Status of pending **[open space habitat/nature lands mitigation and]** agricultural mitigation will be a **[negative]** factor that involving **[open space habitat/nature lands and]** agricultural lands.

It is appropriate for Santa Clara County's LAFCO under the State's mandate to aggressively protect and preserve the remaining open space habitat lands, including fallow agricultural lands, and the remaining agricultural lands for future generations with required strong land mitigation protection and preservation policies. It is also appropriate for the developers, their investors, and the cities to understand that the protection, preservation, and mitigation of both the open space habitat lands including the fallow lands and agricultural lands for future Santa Clara County generations must come up front in the development and city expansion application processes.

I am available to discuss my policy and procedure recommendations with any of the LAFCO commissioners and LAFCO staff members. Again, I am in strong support of the adoption of LAFCO's Agricultural Mitigation Policies.

Respectfully,

Ken Bone
3290 Godfrey Ave.
Gilroy, CA 95020
408-848-1036
fishbone1@earthlink.net

Santa Clara County LAFCO's Land Mitigation Draft Policy Changes

- Recommendations by Ken Bone
- Unincorporated Santa Clara County property owner
- As a member of the Loma Prieta Chapter of the Sierra Club, Santa Clara Valley Audubon Society, The Nature Conservancy, National Wildlife Federation, and the Pajaro River Watershed Committee

Recommended LAFCO Actions

- Adopt a land mitigation policy that includes both Open Space and Fallow Lands in all sections of the policy at not less than a 2:1 preservation ratio
- Provide 2 years for mitigation completion with a possible 1-year extension based on a proven record of genuine compliance and a proven extension need
- Provide in-lieu fees at not less than 3:1 ratio, acres preserved for every one acre converted]] to an [open space/nature Trust or agricultural conservation Trust entity belonging to the Land Trust Alliance
- Provide for Open Space education and native plant and animal restoration programs

Recommended LAFCO Actions

- Add a Definition section similar to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 that:
- demonstrates beyond a doubt that Fallow (unseeded) Lands are specifically included in the final LAFCO mitigation policy
- Includes Open Space Lands (such as the Eagle Ridge and Coyote Housing Group development type elevated hillside lands) are specifically included in the final LAFCO mitigation policy

LAFCO & Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000

- Chapter 2 Definitions, page 2
- 56016 "Agricultural lands" means land currently used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under a crop rotational program or land enrolled in an agricultural subsidy or set-aside program (including Santa Clara County's Wilson Act past, present, and future properties)

Cortese-Knox-Hertzberg Local

Government Reorganization Act of 2000

- Chapter 2 Definitions, page 8
- 56059 "Open space" means any parcel or area of land or water which is substantially unimproved and devoted to an open-space use as defined in Section 65560.
- No Open Space or Fallow lands were specifically included in either the Gilroy City or in the LAFCO draft policies apparently due to both City and developer political pressures

Cortese-Knox-Hertzberg Local

Government Reorganization Act of 2000

- Chapter 2 Definitions, page 9
- 56064 "Prime agricultural lands" are defined a. - e. as stated in the Gilroy City and proposed LAFCO mitigation policy.
- No where in the Act does it restrict land mitigation to only "Prime" Agricultural Land as was done in the 2003 Gilroy and now as proposed in the LAFCO mitigation policy
- Both the Gilroy and LAFCO policies have incorrectly narrowed the mitigation lands due to political pressures rather than preservation

Why are Open Space and Fallow Lands unspecified in the draft policy?

- Clearly the proposed policy does not attempt to properly or adequately address Open Space or Fallow (unseeded) Land protection
- LAFCO's Mission Statement States "LAFCO's mission is to discourage urban sprawl, preserve open space and prime agricultural lands, promote the efficient provision of government services and encourage the orderly formation of local agencies..."
- Only half of the Mission Statement is being addressed in the draft policy, it must also protect and preserve our Open Space

HWY 152, 100 fallow acre Open Space development example of the protection need

- Gilroy's 100 acre McCarthy Business Park "fallow land" project did not identify or mitigate the land or the endangered (species of special concern) Burrowing Owl
- At least one Burrowing Owl was killed
- One Burrowing Owl flew into the Barnes & Noble bookstore windows on Camino Arroyo
- One Injured Burrowing Owl was taken to the Wildlife Education and Rehabilitation Center
- None were identified as living there and none were protected. Where are the Owls to go if no fallow land is protected or preserved?

Open Space and Fallow (unseeded) Agricultural Lands

- Open Space includes Open Space Habitat Lands for both Endangered and for Native Plants and Animals such as the Burrowing Owl (Helps the Farmers)
- Fallow Lands Are not specified in the proposed Mitigation Policy. Why leave it to interpretation which may change over time?
- Unless preserved now, today's valuable Fallow Lands will become Extinct and will not be available to be tomorrow's Prime Agricultural Lands. "Buy Local" fresh produce and support our farmers on preserved lands!

First Mission Statement paragraph recommended change

- LAFCO's mission is to discourage urban sprawl, preserve Open Space [habitat lands, including fallow (unseeded) agricultural open space lands], and prime agricultural lands, promote the efficient provision of government services and encourage the orderly formation of local agencies...

Second Mission Statement paragraph recommended change

- "It is the intent of LAFCO to set forth through written policies, LAFCO's
- standards and procedures for providing [open space habitat land, including fallow (unseeded) agricultural open space land, and prime] agricultural [land] mitigation for LAFCO proposals involving [open space habitat lands, including fallow (unseeded) agricultural open space lands, and prime] agricultural lands, consistent with LAFCO's current policies and LAFCO's mandate."

Open Space Habitat Lands and Fallow (unseeded) Agricultural Lands statement additions

- I have presented to the Commission copies of your December 6th draft with Open Space Habitat Lands and Fallow (unseeded) Agricultural Lands statements added in a bracketed, bold, and underlined format to each of the draft policy sections where they should be included.
- Please refer to my recommended draft revisions for your review and adoption.

#7 Specific Additional Recommendations

- Definition of Prime Agricultural Lands
- 12/6 Draft item # 7, section a. Land [may qualify.] ...
- 12/6 Draft item # 7, section b. Land [may qualify if rated] ...
- 12/6 Draft item # 7, section c. must be omitted because the section is too vague, the type of livestock is not identified, no known unincorporated non-irrigated acreage can support one cow per acre. "(Add these words to avoid unethical land manipulation of years, livestock numbers, or monetary amounts to avoid the required mitigation and to avoid legal challenges to LAFCO)"

#7 Shortening 7d. & e. Recommendations

- 12/6 Draft item # 7, section d. needs to be shortened to state: "Land planted with fruit or nut-bearing trees, vines, bushes, or crops."
- 12/6 Draft item # 7, section e. needs to be shortened to state: "Land that has returned from the production of unprocessed agricultural plant products."

(This will avoid unethical land manipulation of years or monetary amounts prior to applying just to avoid this required mitigation and to avoid legal challenges to LAFCO)

#7 Potential to be Productive Land Recommendation

- 12/6 Draft item # 7 needs to have an item # 7 f. added that states: [7 f. "All land that has the potential to be productive agricultural land"]

(This will avoid land manipulation prior to applying just to avoid this required mitigation and avoid legal challenges to LAFCO)

#7 Adding Open Space Definition Recommendation

- After 12/6 Draft item # 7 a new section number 8 needs to be added.
- Section [8 Definition of Open Space Habitat Lands.] [Protection and preservation of all habitat lands that are undeveloped, undisturbed, or lie fallow (unseeded), or unused for crops or agriculture of any kind are valued for its natural open space setting and are valued for providing an open space habitat that may be utilized by native plants and animals (such as the endangered Burrowing Owl) and by re-introduced native plants and animals.]

#8 Adding Open Space/Fallow Land and a 2:1 Recommendation

- Mitigation Requirements
- 12/6 Draft item # 8. Proposals involving the conversion of [open space habitat lands, including fallow agricultural open space lands, and] prime agricultural lands shall not be approved unless one of following mitigations is provided at a not less than [2:1 preservation] ratio (two (2) acres) preserved for every [one (1)] acre converted...

8 Land Trust Alliance Recommendation

- 12/6 Draft item # 8.a. The acquisition and transfer of ownership of [open space habitat land, including fallow (unseeded) agricultural open land, and prime] agricultural land to an [open space/nature Trust and/or] an agricultural conservation [Trust] entity [belonging to the Land Trust Alliance] ...

8 In-Lieu Fees 3:1, 3 acres preserved Recommendation

- 12/6 Draft item # 8. c. 2.
- The payment of in-lieu fees [at not less than 3: 1 (3 acres preserved for every one acre converted)] to an [open space/nature Trust or] agricultural conservation [Trust] entity [with the standards of the Land Trust Alliance] that are sufficient to fully fund: ...

8 Habitat Education Recommendation

- 12/6 Draft item # 8. c. 2. ... as the costs of promoting [open space habitat lands, including open space habitat education and supervised programs of volunteers to eradicate invasive non-native species (such as the Star Thistle) and the re-introduction of native plant and animal species to the mitigated open space habitat lands including the fallow agricultural lands (such as the Burrowing Owl), and] agriculture on the mitigated [agricultural] lands.

10 Better Quality & Open Space Habitat Land Threatened / Impacted Recommendations

- 12/6 Draft item # 10 a. [Open space habitat land and/or] agricultural land of equivalent [or better] quality and character ...
- 12/6 Draft item # 10 b. Located within the city's sphere of influence in an area planned/envisioned for [open space habitat and/or] agriculture [that would otherwise be threatened / impacted in the reasonably foreseeable future by development, and] ...

10 Restore 10 c. Edge Recommendation

- Restore 12/6 Draft item # 10. c. [Will promote the definition and/or creation of a permanent urban / open space habitat lands including fallow agricultural lands, and/or agricultural edge or contribute to a local open space environmental nature conservation preserve project such as The Nature Conservancy's Pajaro River Soap Lake preserve.]

11 d. Adding Open Space Education Program Recommendation

- Add a new section item # 11 d.
- [Development of an open space education program and supervised volunteer programs for the removal of invasive non-native plants and animals and the reintroduction of native plants and animals (such as the Burrowing Owl) to the open space habitat lands including fallow agricultural lands.]

14 Land Trust Alliance Protection Recommendation

- 12/6 Draft item # 14 a. An agreement between the property owner(s) and the city or between the property owner, city and [the open space habitat/nature or] agricultural conservation entity [that belongs to the Land Trust Alliance] (if such an entity is involved)... .. mitigation for the loss of [open space habitat/nature lands and] prime agricultural lands ...

✶ # 14 Preserved Property Recorded Protection Recommendation

- 12/6 Draft item # 14 a. continued ...
Upon LAFCO's conditional approval, the agreement must be recorded with the County Recorders' Office against the property to be developed and against the property that is mitigated, preserved, or set aside

✶ # 15 Two Year Conditional Approval, 3:1 In-Lieu Fees Recommendation

- **Timing and Fulfillment of Mitigation**
12/6 Draft item # 15. (Change back LAFCO Draft items #15, as previously written with the [two (2)] years of conditional approval. (that is 24 full months to comply which is enough time for the serious acquisition of the replacement open space habitat lands or agricultural lands or conservation easements to be acquired and transferred or the [3:1] in-lieu fees be paid, or the conditional approval may expire [without a demonstrated need for a one year extension].)

✶ # 17 Two Years Conditional Approval with Demonstrated Need Recommendation

- 12/6 Draft item # 17. (Change back LAFCO Draft items #17, as previously written with the [two (2)] years of conditional approval)
- 12/6 Draft item # 17. If the conditions of approval are not met within [two (2)] years, [the conditional approval will expire unless the] applicant [pays the additional extension fees and re-applies] to LAFCO [within the last six (6) months of the initial two (2) year initial conditional approval period] for [a LAFCO] extension [including demonstrating the continuing active pursuit of the required land mitigation, and the demonstrated actual need for]...

✶ # 17 Max. One Year Extension With New Application Fees Recommendation

- 12/6 Draft item # 17. (Change back LAFCO Draft items #17 continued
- ...[a LAFCO approved extension], not to exceed [a maximum of one (1) additional] year. [All] further consideration by LAFCO will require a new application [and the payment of all new application fees. No additional extensions will be considered or allowed by LAFCO.]

✶ # 19 Pending Land Mitigation a Negative Factor Recommendation

- 12/6 Draft item # 19. ... involving [open space habitat/nature lands and] agricultural lands if [open space habitat/nature land mitigation and] agricultural mitigation has not been completed for the city's previous approvals. Status of pending [open space habitat/nature lands mitigation and] agricultural mitigation will be a [negative] factor that ...

✶ Protection and Preservation of Open Lands

- It is appropriate for Santa Clara County's LAFCO under the State's mandate to aggressively protect and preserve the remaining open space habitat lands, including fallow agricultural lands, and the remaining agricultural lands for future generations with required strong land mitigation protection and preservation policies.

Protection and Preservation of Open Lands

- It is also appropriate for the developers, their investors, and the cities to understand that the protection, preservation, and mitigation of both the open space habitat lands, including the fallow lands, and agricultural lands for future Santa Clara County generations must come up front in the development and city expansion application processes.

The Benefits to the Local Farmers

- The protection and preservation of Open Space, especially Fallow Lands, benefits the farmers directly by providing a agricultural land bank on the rural edges of the County's cities
- These preserved lands will provide protected lands for local food production and the protection of the agricultural way of life
- These preserved lands will provide protected lands for the Burrowing Owl which feed on rodents protecting crops

The Benefits to the Local Communities and the County

- The protection and preservation of Open Space, especially Fallow Lands, benefits the local communities by providing a agricultural land bank on the rural edges of the County's cities for open space habitat education, for local farming, and for farming education.
- Open Space will attract people to the County's Open Space communities rather than to the crowded big cities.

The Benefits to Santa Clara County

- The protection and preservation of Open Space, including the fallow and agricultural lands, benefits the local environment directly by providing a agricultural and open space land bank on the rural edges of the County's cities for all the citizens to cherish and enjoy.
- "The valley of hearts content" can still be enjoyed by our future generations, if we commit to it now!

The Benefits to the local Environment

- The protection and preservation of Open Space, including the fallow and agricultural lands, benefits the local environment directly by providing a agricultural and Open Space Nature Preserve on the rural edges of the County's cities for native plants and animals to be enjoyed by our future generations.
- we commit to preserve land now!

The Commission's Required Action to Protect Open Space

- Today is the time to act and accept the Commission's responsibility to protect and preserve Open Space, Fallow Lands, and agricultural lands for the coming generations.
- Set aside the self interests of the developers, their colleagues, and their staff
- Adopt a strong land mitigation policy today that includes Open Space Habitat Land and Fallow Land protections in a 1:2 ratio and within a 2 year mitigation completion period.

Thank the Commission for the Opportunity to Give My Input and Recommendations

- I would like to thank the Commission for the opportunity to give my input and recommendations to the Commission
- I am very passionate about providing Open Space and it's environments for our County and our coming generations
- I hope that I have passed that passion on to the Commission for their fallow land consideration and inclusion, and Open Space mitigation inclusion and adoption

Recommended LAFCO Actions

- Adopt a land mitigation policy that includes both Open Space and Fallow Lands in all sections of the policy at not less than a 2:1 preservation ratio
- Provide 2 years for mitigation completion with a possible 1-year extension based on a proven record of genuine compliance and a proven extension need
- Provide in-lieu fees at not less than 3:1 ratio , acres preserved for every one acre converted)) to an [open space/nature Trust or agricultural conservation Trust entity belonging to the Land Trust Alliance
- Provide for Open Space education and native plant and animal restoration programs

Recommended LAFCO Actions

- Add a Definition section similar to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 that:
demonstrates beyond a doubt that Fallow (unseeded) Lands are specifically included in the final LAFCO mitigation policy
- Includes Open Space Lands (such as the Eagle Ridge and Coyote Housing Group development type elevated hillside lands) are specifically included in the final LAFCO mitigation policy



"Ken Bone"
<fishbone1@earthlink.net>

12/15/2006 01:50 PM
Please respond to
fishbone1

To: "Blanca Alvarado" <blanca.alvarado@bos.sccgov.org>, "Don Gage" <don.gage@bos.sccgov.org>, "John Howe" <jh2@aol.com>, "Linda LeZotte" <linda.lezotte@ci.sj.ca.us>, "Susan Vicklund Wilson" <susan@svwilsonlaw.com>, "Pete McHugh" <Peter.Mchugh@bos.sccgov.org>, "Roland Velasco" <rvelasco@ci.gilroy.ca.us>, "Chuck Reed" <District4@ci.sj.ca.us>, "Terry Trumbull" <TerryT1011@aol.com>
cc: "Neelima Palacherla" <neelima.palacherla@ceo.sccgov.org>, "Dunia Noel" <dunia.noel@ceo.sccgov.org>, "Emmanuel Abello" <emmanuel.abello@ceo.sccgov.org>
Subject: 1968 Napa Valley enacted the nation's first Agriculture Preserve

Commissioners,

I am concerned that the LAFCO Commission seems to be slowly drifting more towards land development concerns than open space and agricultural land preservation concerns.

Thought that Napa county's insight and attitude might be of interest to the commissioners. Shows what the agricultural and community interests can do if willing to work together for land preservation. Ken Bone

Open Space and Agricultural Land Preservation

While it may appear to the casual observer that Napa County is bursting with grape vines, the truth is that **only nine percent of Napa County is planted in vineyards and less than three percent remains suitable for grape planting**, according to the findings of the Napa County Watershed Task Force. Napa County encompasses 485,120 acres in total and just 45,275 acres are planted in vineyards.

In the late 1950s and early 1960s, landowners realized that the encroaching urban growth to the south all but guaranteed that their land values were about to increase exponentially. Left unchecked much of the Valley could by now have become paved over and covered in tract-homes and strip-malls similar to Santa Clara Valley, once a thriving agricultural area.

In 1968, Napa Valley vintners and others in the community had the forethought to preserve open space and prevent future over-development by enacting the nation's first Agriculture Preserve. Since its adoption, not one acre of land has been removed from the preserve. This land-zoning ordinance established agriculture and open space as the "best use" for the land in the "fertile valley and foothill areas of Napa County." Initially the ordinance protected 23,000 acres of agricultural land stretching from Napa in the south to Calistoga. **Today, more than 30,000 acres are contained within the Preserve.**

Thirty years ago, in the formative stages of today's Napa Valley wine industry, local vintners joined the community's successful opposition to Caltrans plans for a freeway running up the valley. Twenty years ago, vintners and others promoted the successful passage of Measure A. Eleven years ago, the "2020 Initiative" was passed to hold all county land zonings in place through the year 2020 unless changed by a 2/3 vote of the people.

Local vintners are well into a second-generation effort to preserve the Valley. Working with the the Land Trust of Napa County, vintners are joining other property owners in placing their land into Conservation Easements. These easements dictate how designated parcels will be used in perpetuity - without a sunset date.

Of the approximately 11,000 acres of Napa County acreage that is forever guaranteed to remain rural through the Conservation Easement program, 5,100 acres been set aside by vintners. Those who place their land in these easements are making a bottom line sacrifice. Another 16,000 acres are protected under the Williamson Act, a program that provides incentives to keep land in agriculture production and open space.

Vintners have played a big role in the history of Napa Valley's preservation. And we will continue to play a vital role in ensuring that the pastoral beauty and intact natural environment that we all enjoy today still exists for future generations.

Ken Bone

fishbone1@earthlink.net

**Support Urgently Needed to Include Open Space Habitat Lands at the
December 13 LAFCO Agricultural Mitigation Policy Meeting**

**Published December 13, 2006 in the Gilroy Dispatch Letters to the Editor
section under the Editor's heading: Mitigation Policies Essential if Any Rural
Land is to Survive Development**

Dear Editor,

**Thank you for the opportunity to clarify the shared goals and the mitigation
processes of both the Gilroy City and Santa Clara County's LAFCO
Agricultural Mitigation Policies. These preservation Agricultural Mitigation
Policies are not denying full market value sale prices to land owners, nor are
they to be used for eminent domain actions by the State or municipalities.**

**To better understand and become familiar with these important needed
Agricultural Mitigation Policies, their goals, and stated protections, please go
online to: www.ci.gilroy.ca.us/planning/pdf/AgPolicy505.pdf to read Gilroy's
current adopted policy and go to www.santaclara.lafco.ca.gov to read the
current LAFCO mitigation draft policy listed under "What's New."**

**The city and county developers should be willing, and if not, required to
protectively mitigate both the open space habitat lands, including the fallow
(unseeded) agricultural lands, in addition to mitigating the "prime"
agricultural lands. The projects that they are applying to develop within in
the cities or applying through the cities to annex to the cities for development
need open space land mitigation. The problem is that the mitigating
agricultural land policies currently do not include open space habitat lands
for required mitigation.**

**The developers, through the city agencies, should be willing, and if not,
required to select and complete one of the three proposed LAFCO annexation
mitigation processes within 24 months to preserve both our open space habitat
lands and our prime agricultural lands in the unincorporated county:**

- 1. The acquisition and transfer of ownership of agricultural land to an
agricultural conservation entity for permanent protection of the
agricultural land or**
- 2. The acquisition and transfer of agricultural conservation easements to
an agricultural conservation entity for permanent protection of the
agricultural land or**

3. The payment of in-lieu fees to an agricultural conservation entity that are sufficient to fully fund:

- The acquisition of agricultural lands or agricultural conservation easements for permanent protection, and**
- The cost of administering, managing, monitoring and enforcing the agricultural lands or agricultural easements, as well as the costs of promoting agriculture on the mitigation lands.**

At least a 1:1 agricultural land annexation conversion ratio (I prefer a 2:1 ratio) would help preserve a vanishing rural agricultural edge for each of the Santa Clara County cities. Every county taxpayer pays a very high price for development and for city expansion. It's in everyone's best interest to preserve both open space habitat lands and the prime agricultural lands, and to control urban sprawl for the future benefit of all the citizens. This is especially true for the city residents having to endure the added competition for limited water and energy, the added traffic and transportation problems, and the strained vital city services including sewage treatment and waste disposal.

Please attend the LAFCO's December 13; 1:15 pm public hearing in the San Jose Board of Supervisor's Chambers at 70 West Hedding Street. The Commissioners will consider and perhaps adopt the Santa Clara County's LAFCO annexation Agricultural Mitigation Policy at the meeting.

Please speak out for the inclusion of open space habitat lands and fallow agricultural lands as well as in support of the protection and preservation of our county's remaining unincorporated prime agricultural lands.

Respectfully,

**Ken Bone
Gilroy resident
408-848-1036
fishbone1@earthlink.net**



January 5, 2007

Santa Clara County LAFCO Commissioners
Local Agency Formation Commission
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

Re: LAFCO sub-committee to review proposed Agricultural Mitigation Policy

Dear LAFCO Commissioners:

The Gilroy Chamber of Commerce extends its appreciation for the open dialogue offered to stakeholders at the December 13, 2006 hearing. We were also impressed with the direction that the LAFCO Commission recommended that resulted in a sub-committee directed to examine the draft Agricultural Mitigation Policy more closely. The recognition of stakeholder input resounded as an important objective for LAFCO, and we appreciate and applaud the continuing efforts.

It has come to our attention that recent scheduling fliers circulated by LAFCO staff have limited the discussion to only two specific sections of the proposed policy and requires stakeholders to set up private meetings with staff. Our representatives from the Gilroy Chamber of Commerce Board of Directors, the Government Relations Committee, and Gilroy Chamber of Commerce and Economic Development Corporation staff, clearly understood from the LAFCO dialogue and direction at the December 13 hearing that stakeholder input would be in an open forum.

On behalf of the Gilroy Chamber of Commerce, we respectfully request that the LAFCO sub-committee hold their meetings in the South County, that stakeholders are notified of the meeting date, time, and location, and that we all can be a part of this public review process.

Again, thank you for your time and consideration.

Sincerely,

Susan Valenta
President/C.E.O.

Cc: Gilroy Chamber of Commerce Board of Director
CC: Supervisor Don Gage
CC: Susan Vicklund-Wilson



January 9, 2007

Mayor Protempore Dion Bracco
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

Re: LAFCO subcommittee on agricultural mitigation policy

Dear Dion:

Thank you for your letter regarding the LAFCO subcommittee meeting scheduled for Jan. 24.

I should clarify that at the Dec. 13 meeting, the Commission itself voted to narrow the scope of the agricultural mitigation policy issues that the subcommittee, composed of myself and Commissioner Wilson, would consider. This was not a decision made by LAFCO staff.

The Commissioners decided to have the subcommittee look only at the "Plan for Mitigation" and "Timing and Fulfillment of Mitigation" sections of the policy and to make recommendations to the full Commission for final action. While that will be the focus of the upcoming subcommittee meeting, we will gladly accept comment on the entire proposed ag mitigation policy.

If, after considering the two sections, we decide that we need to broaden our review, we will ask the full Commission for approval to take a look at the other sections that we think need more study.

We will report back to the full Commission at the Feb. 14 meeting, but the full Commission won't take action until the April meeting.

If you have suggestions for the proposed policy before the meeting, you can send them in to LAFCO staff, to give them a chance to analyze any proposed alternatives before the Jan. 24 meeting. If they choose,

stakeholders can meet with LAFCO staff before the subcommittee meeting to discuss their suggestions.

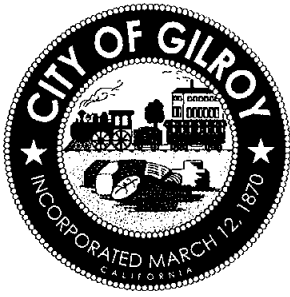
If you have any questions, please feel free to contact me at (408) 299-5010 or LAFCO staff at (408) 299-6415.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don', is positioned below the word 'Sincerely,'.

Donald F. Gage
LAFCO Agricultural Mitigation Policy Subcommittee Member

cc: LAFCO Commissioners
Gilroy Mayor Al Pinheiro



City of Gilroy

7351 Rosanna Street
Gilroy, California
95020-6197

Business (408) 842-4619
Residence (408) 848-6202
Email: apinheiro@ci.gilroy.ca.us
<http://www.ci.gilroy.ca.us>

AL PINHEIRO
MAYOR

January 3, 2007

Santa Clara County LAFCO

Local Agency Formation Commission
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

Re: LAFCO sub-committee to review proposed **Ag Mitigation Policy**

Dear LAFCO;

At the recent public hearing on December 13, 2006, the City of Gilroy was very pleased with the direction that the LAFCO Commission gave in regard to creating a sub-committee in order to examine the subject policy more closely. But more importantly, Gilroy was applauding LAFCO direction to include listening to the stakeholder comments that have been expressed in the last several months.

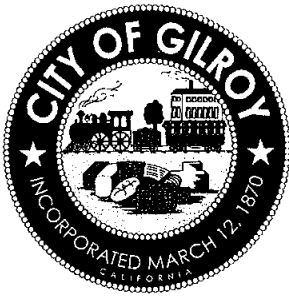
However, recent scheduling fliers circulated by LAFCO staff have limited the discussion to only two specific sections of the proposed policy, and further, require stakeholders to "set up" private meetings with staff. Gilroy clearly understood from LAFCO dialogue and direction on December 13, that stakeholder input would be in an open forum where all interest groups could share their thoughts openly and together.

In addition, the City of Gilroy looks forward to participating in this public review process – hopefully with some meetings in a South County venue. Again, thank you for listening to our issues and concerns.

Sincerely,

Dion Bracco
Mayor Protempore,
City of Gilroy

DB:bf



City of Gilroy

7351 Rosanna Street
Gilroy, California
95020-6197

Business (408) 842-4619
Residence (408) 848-6202
Email: apinheiro@ci.gilroy.ca.us
<http://www.ci.gilroy.ca.us>

AL PINHEIRO
MAYOR

December 22, 2006

Santa Clara County LAFCO members

Local Agency Formation Commission
70 West Heading Street
11th Floor, East Wing
San Jose, CA 95110

Re: Proposed LAFCO Agricultural Mitigation Policy

Dear LAFCO members;

Thank you for the opportunity to speak at your December 13th public hearing on the proposed LAFCO agricultural mitigation policy. Although there were many interested stakeholders at your South County briefing held on November 27 in Gilroy, this hearing had even a wider spectrum of individuals, agencies, and special interests at the microphone. This strong interest clearly illustrates the wide array of interest on this matter [from both sides of the arena], and the need to proceed carefully.

The City of Gilroy is very pleased with the direction the LAFCO Commission has chosen in regard to creating a sub-committee and listening to the many stakeholders that are expressing their interest on this important matter. Gilroy looks forward to participating in all parts of this public review process, including a meeting or two in the South County region.

Again, thank you for listening to our issues and concerns.

Sincerely;

Al Pinheiro
Mayor, City of Gilroy



Carmelbay42@aol.com

12/15/2006 12:01 PM

To: palacherla@ceo.sccgov.org

cc:

Subject: Draft Farm Land Mitigation Plan.

Dear Ms. Palacherla : I am a resident of Gilroy. After watching how the current and past City Councils have addressed the impacts of rapid development in the City, I am convinced the function of LAFCO is more important than ever. There seems to be too close a bond between the bigger developers in this City than there should be to work in the best interest of all residents. I hope LAFCO will approve a policy in April, 2007, that requires farm land replacement if development takes a like amount out of circulation. If the City of Gilroy is left to its own devices, it will pave the countryside!

Very truly yours

Bruce E. Kirk

